United States Court of Appeals for the Second Circuit



APPENDIX

76-2106

To be argued by EDWARD M. CHIKOFSKY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-2106

JOHN STANLEY WOJTOWICZ,

Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

On Appeal from the United States District Court for the Eastern District of New York 1

APPENDIX



EDWARD M. CHIKOFSKY Attorney for Appellant 410 Park Avenue New York, New York 10022 (212) 355-2380 PAGINATION AS IN ORIGINAL COPY

APPENDIX

- 1. Docket Sheets, 75 C 921 (E.D.N.Y.)
- 2. Docket Sheets, 72 CR 1056 (E.D.N.Y.)
- 3. Memorandum and Order, 75 C 921 (E.D.N.Y., January 15, 1976)
- 4. Minutes of Guilty Plea, 72 CR 1056 (E.D.N.Y., February 23, 1973)
- 5. Minutes of Sentencing, 72 CR 1056 (E.D.N.Y., April 23, 1973)
- 6. Appellant's Rule 35 Motion, filed August 15, 1973
- 7. Appellant's Pro Se §2255 Petition and Supporting Affidavits, filed October 21, 1975
- 8. Appellant's Affidavit in Traverse, filed December 12, 1975
- 9. Appellant's <u>Pro Se Motion for Reconsideration</u>, filed January 30, 1976
- 10. Appellant's Pro Se Affidavit, filed February 17, 1976
- 11. Appellant's Memorandum and Annexed Exhibit, filed May 12, 1976

DESTABLE to the contract of 111 111 DEFENDANTS WOJTOUTCZ, JOIN UNITED STATES OF ALERICA JOHN WOJTOWICZ CAUSE Pursuant to Sec. 2255 (Related Case 72-CR-1056 TRAVIA, J.) ATTORNEYS DAVID G. TRAGER JOHN WOJTOWICZ ! #76456 U. S. ATTORNEY 225 Cadman Plaza East Pro Se P.O. Box 1000 Brooklyn, N.Y. 11201 Lewisburg, Pa., 17837 BEST COPY AVAILABLE

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DATE	NII.	PROCEEDINGS
5-11-75 5-75		"MOTION FOR SPECIFIC COUNSEL AND/OR JUDGE" filed. (1) BY WEINSTEIN, J. MEMORANDUM FILED TO CLERK that this matter be
5 -11-75		copy of letter of Clerk of Court filed dated June 9, 1975 acknowled
3-11-73		ing application, etc. (3)
6-24-75		Letter of George Heath filed dated June 19, 1975 addressed to (4)
		Court, etc., requesting that the entire file (72-CR-1056) be sent to him, etc.
6/26/75		Letter from deft and accompanying affidavit to proceed in forma pauperis filed (5)
7-30-75		Letter from John S. Wojtowicz dtd 7-28-75 filed. (5)
8-26-75		BY PLATT, J. Order to show cause filed (dated August 25, 1975) (7
		(1) The U.S. Atty., to show cause before this Court why the relief should not be granted, by the filing of a return to the petition, etc. (See order)
8-26-75		COPY OF LETTER OF CLERK OF COURT FILED dated Aug. 26, 1975 addressed petitioner herein re enclosure of a copy of order, etc. cc: U.S. Atry.
ā-		E.D.N.Y. (8)
9 7-75		Petitioner's motion to grant xerox copies filed. (9)
9/22/75		Affirmation of George Heath filed. (10)
10/21/75		Petition, for Writ of Habeas Corpus filed. (with attached (11) papers)
11-5-75		BY PLATT, J. ORDER FILED that petitioner be and hereby is permitted to commence and to prosecute this action without being required to pay fees or costs, etc., Clerk is ordered to forward a copy of this order to the petitioner herein. (12)
11-5-75	5	BY PLATT, J. ORDER TO SHOW CAUSE FILED (1) The U.S. Atty., to show
		cause before this Court why the relief requested should not be grante by filing a return to the petition, etc. (See Order) (13)
11-5-75		Copy of letter of Clerk of Court filed dated Nov. 5, 1975 addressed()
		to Mr. John Wojtowicz re enclosure of a copy of order to show cause,
1-5-75		cc: U.S. Atty., E.D.N.Y. Affidavit of Ms. Liz Eden (formerly Mr. Ernest Aron) etc. (1'
11-5-75		Letter of John S. Wojtowicz filed dated Oct. 30, 1975, etc.
11-26-7	5	Affidavit of GAVIN W. SCOTTI, Assistant U.S. Atty., filed in respon
		to the Court's Order to Show Cause, etc. (17.
12-17	5	Traverse filed to respondent's response to Court order of Nov. 3,
2-76		Copy of letter from J. S. Mojtovicz dtd 12-4-75 with documents attached. (mg)
1-16-76		By PLATT, J Memorandum and Order dtd 1-15-76 denying motion to
1-36-76	7	vacate pursuant to 2255 filed.(copies mailed as directed).\(\lambda \rightarrow\) UDCOMENT dtd 1-16-76 dimmissing the petition filed.\(\lambda \rightarrow\) (21) (22)
2-17-76	0	Affidavit of George Heath filed

VIL DOCKET		NUATION SHEET	•			
LACTIFF			DEFENDANT			
UNITED STATES OF AMERICA			JOHN VOJTOWICZ		DOCKLENO. 75C 021	
DATE	NR.		PROCEEDINGS	electrical complete de destroir entre entre de comment en entre entre entre entre entre entre entre entre entre		
2-17-7	5	Letter dtd 1-27-	76 to J. Platf from petitio	oner filed.	(24)	
2-26-7	5	motion for recon	plemental memo and order the sideration is denied filed.	. Copies mailed.	(25)	
3-4-76 3-4-76			76 to J. Platt from G. Weath from		(26)	

6-17-76 8-3-76 9-15-76

3-22-76

5-12-76

-12-76

3-8-76 3

Letter dtd 1-27-76 to J. Platf from petitioner filed. (24)

By FIATT, J. - Supplemental memo and order that petitioner's
motion for reconsideration is denied filed. Copies mailed. (25)

Letter dtd 2-25-76 to J. Platt from C. "eath filed. (26)

Copy of letter dtd 3-2-76 to C. "eath from Mark Power filed. (27)

By FIATT, J. - Order of dismissal dtd 3-8-76 filed(p/c mailed to attys). (28)

Letter from pltff dtd 3-8-76 treated as notice of appeal filed. (29)

Memorandum in support of petition for sentence modification. (30)

Motion pursuant to Rule 45(c) filed
By FLATT, J-Suppelmental memorandum & Order dtd 6-16-76 (31)

denying motion for a transfer to MCC filed. Copy mailed. (32)

Record on appeal mailed to C of A.

Copy of order of C of A rec'd & filed granting appellant's motion to proceed in forma pauperis & for assignment of counsel. (33)

Above record ret'd from C of A for certification. Record prepared, certified and returned. ...

9-13-71-151

72CR1056

DATE	PROCEFOINGS					
12/15/72	Before TRAVIA, J Case called -Deft's motion for a bill of particulars, etc. granted.					
/16/73	Before TRAVIA, J Case called- Deft WOYTOWICZ and counsel MARK A. LANDSM present- Deft withdraws his plea of not guilty and having been advised of					
	rights by the court and on his two behalf enters a plea of guilty to count Bail cont'd and sentence adjd w/o/ date-Deft WESTENBERG and counsel MICHA					
	J. GILLIN present- Case adjd to 3/23/73 to set trial date-Bail cont'd.					
2-21-73	Govts Notice of Readiness for Trial filed(Westenberg) Stenographer's transcript of 2/16/73 filed.					
3-23-73	Before TRAVIA J - Case called - Deft WESTENBERG & counsel M.Gillen					
	present - deft withdraws his plea of not guilty and having been advised of his rights by the court, including the Youth Corrections Act, and					
	on his own behalf, enters a plea of guilty to count (4) sentence aujd					
47073	without date - bail continued.					
4/2/13	Letter from deft filed (appl. for red. of sentence) with MENNEZEN reply					
4-13-73	to counsel for the deft (WOJTOWICZ) Letter of 4-12=73 to Judge Travia filed from Mark Landman, Esq. (WOYTOWIC)					
4-23-73	Before TRAVIA J - Case called - Deft WOITONICZ & counsel Mark Landsman .					
	present - Deft sentenced to imprisonment for 20 years on count (2).					
	On motion of Asst US Atty Boyd counts 1, 3 & 4 are dismissed. Deft.					
-	WESTENBERG & counsel Michael Gillen present - deft sentenced to imprison- ment for 2 years on count 4 - On motion of Asst US Atty. Boyd counts:					
	1, 2 & 3 are dismissed					
4-23-73	Judgment & Commitment filed for both defts - certified copies to Marshal.					
./26/73	Certified copy of Judgment and Commitment rend and filed. Deft delivered					
-10/70	to Federal Letention Headquarters (MO.MTOWICZ)					
5/2/73	Certified copy of Judgment and Commitment retd and filed. Deft delivered					
E /7 /72	Fed. Det. Hdqs. (wiSTENPERG)					
5/7/73	Voucher for Compensation filed.					
8/15/73						
3/5/23	Before TRAVIA, J Fotien for religition of sentence argued and denied (NO					
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IN CITIES OFFICE U.S. D. TO CI COURTED, N.Y.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

¥ JAN 1 6 1976

TIME A.M.

JOHN STANLEY WOJTOWICZ,

75 C 921

Petitioner,

MEMORANDUM AND ORDER

-against-

THE UNITED STATES OF AMERICA.

January 15, 1976

Respondent.

M'FIANED

PLATT, D.J.

John Stanley Wojtowicz, presently incarcerated at the United States Penitentiary at Lewisburg, Pennsylvania, has filed, pro se, a motion pursuant to Title 28 U.S.C. § 2255, to vacate, set aside or correct the sentence imposed upon him for violation of Title 18 U.S.C. § 2113(d). In the alternative, petitioner has moved for reduction of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure.

Petitioner was indicted on August 23, 1972, for his participation in the armed robbery of a branch office of the Chase Manhattan Bank in Brooklyn, New York. The four count indictment (72 CR 1056) charged petitioner with violation of Title 18 U.S.C. §§ 2113(a), 2113(d) and 2113(e) (bank robbery), and Title 18 U.S.C. § 371 (conspiracy). On February 16, 1973, petitioner, accompanied by retained counsel, pled guilty to Count Two of the indictment. Count Two charged petitioner with violation of Title 18 U.S.C. § 2113(d) and carried a maximum penalty of twenty-five years imprisonment and/or a Ten Thousand Dollar fine. On April 23,

1973, before Judge Travia (who had accepted petitioner's guilty plea), petitioner was sentenced to twenty years imprisonment. The remaining three counts of the indictment were thereafter dismissed on the Government's motion.

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Petitioner now raises several constitutional claims in this collateral attack on his sentence. First, he contends that his guilty plea was induced by his counsel's statement to him that, if he pled guilty to Count Two, he would receive no more than a "ten or fifteen year prison term." (Petitioner's brief p. 3). Petitioner further states that his attorney prevailed upon his family and friends to advise him to plead guilty by leading them to believe that such a prison term as he predicted would be imposed. Because of this estimate by his attorney, and in light of the twenty year sentence he received, petitioner now seeks to have this Court reduce his sentence to a period of time more consistent with his expectation at the time he entered his plea. It is important to point out that petitioner has not raised the issue of the non-voluntariness of his plea requiring the setting aside of his conviction, but rather, that because of his expectation allegedly induced by his attorney, the Court should reduce his sentence. Secondly, petitioner now raises the issue of the constitutionality of the statute under which he was convicted. Petitioner argues that the Federal Court lacked jurisdiction over the offense of bank robbery (18 U.S.C. § 2113, et seq.) because Article III of the United States Constitution prohibits the exercise of jurisdiction over those areas not enumerated in Article III § 2. Therefore,

the petitioner rationalizes, ". . . for the U.S. to acquire jurisdiction over a Bank Robbery case, the defendant would have had to move stolen bank money in Interstate or Poreign commerce." (Petitioner's "Interlocutory Statement" p. 7). For the reasons hereinafter stated, petitioner's motion must be denied and the petition dismissed.

Because a motion pursuant to Section 2255 is a collateral attack on the judgment of conviction, the burden is on the petitioner to establish a basis for relief on the grounds set forth in the statute. Consequently, to be successful on this motion, petitioner must allege substantial issues of fact which, if proven, would entitle him to the relief he seeks. See Taylor v. United States, 229 F.2d 826 (8th Cir.), cert. denied, 351 U.S. 986, 76 S.Ct. 1055, 100 L.Ed. 100 (1956); United States v. Pisciotta, 199 F.2d 603 (2d Cir. 1952). In determining whether to grant an evidentiary hearing on the petition, the Court is mindful of its obligation to do so "[U]nless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief." Title 28 U.S.C. § 2255. See also Taylor v. United States, 487 F.2d 307 (2d Cir. 1973); Torres v. United States, 370 F. Supp. 1348 (E.D.N.Y. 1974).

In petitioner's case, a review of the transcript minutes of his plea and sentencing reveal that there can be no question but that petitioner was fully aware that he faced a possible prison term of up to twenty-five years and a maximum fine of Ten Thousand Dollars. On February 16, 1973,

when petitioner entered his plea of guilty to Count Two of the indictment, Judge Travia advised petitioner fully of his rights and of the consequences of his plea as required by Rule 11, Federal Rules of Criminal Procedure. At that time, in a colloquy between the Judge and petitioner, Wojtowicz stated that he was pleading guilty voluntarily and that:

THE DEFENDANT: "I plan to plead guilty to Count 2, your Honor, under the understanding that if I do plead guilty to the armed robbery, the other three charges of bank robbery, kidnapping and conspiracy will be dropped as my lawyer, Mr. Landsman, has told me; that the D.A. has told him this. Only if this is true, I will do this and plead guilty...

THE COURT: "Before you do that, that's exactly what I told you when I said you will be pleading guilty in full satisfaction of the entire indictment here which means that counts 1, 3 and 4, will be dismissed at the time of sentence.

THE DEFENDANT: "Yes, your Honor.

THE COURT: "Is that your understanding?

THE DEFENDANT: "Yes.

THE COURT: "In other words, that was the only promise that was made to you?

THE DEFENDANT: "Yes, your Monor.

THE COURT: "There was no promise made to you about what the Court may do on Count 2?

THE DEFENDANT: "No, your Honor.

THE COURT: "You know that that carries a penalty of up to 25 years?

THE DEFENDANT: "Yes, your Honor.

THE COURT: "Plus a fine of \$25,000.00 or both?

THE DEFENDANT: "Yes, your Monor."
(Official Transcript, "Plea minutes" February 16, 1973, pp. 7-8).

Thereafter, during the same discussion, Judge Travia stated further,

THE COURT: "Has anyone made any promises of any kind to you or threats of any kind to induce you to plead guilty other than the promise that the other counts in this indictment will be dismissed?

THE DEFENDANT: "No, your Honor.

THE COURT: "No one told you what I may do?

THE DEFENDANT: "No, your Honor.

THE COURT: "But they did tell you that I could sentence you to the terms that I just mentioned, up to 25 years and up to \$25,000.00 or both?

THE DEFENDANT: "Yes, your Honor.

THE COURT: "Nobody inferred to you that I might do less?

THE DEFENDANT: "No, your Honor." (Official Transcript, "Plea minutes", February 16, 1973, pp. 15-16).

Subsequently, on April 23, 1973, when petitioner was returned to Court for sentencing, there was discussion between petitioner, counsel and the Court concerning petitioner's earlier plea. Twice more that day Judge Travia went over with petitioner the consequences of his plea. See Official Transcript, April 23, 1973, pp. 23-24, 32-33. Finally, and only after the Court had exhaustively questioned petitioner regarding his plea, did the Court allow petitioner to confirm his desire to plead guilty to Count Two.

The fact that the Court explained four times to petitioner the penalties which would be imposed upon him and, petitioner's answers to the Court's inquiries, conclusively shows

that petitioner could not have been, in light of the surrounding circumstances, proceeding under a reasonable belief that his attorney's alleged sentence estimate was correct. Furthermore, Judge Travia had made it abundantly clear to petitioner that he, and he alone, would determine the sentence within the maximum limits allowed by the statute.

It is important to point out, however, that petitioner does not assert that his plea was involuntary because of misinformation as to the maximum fine allowable under the statute. It is true that the judge erred in indicating a \$25,000.00 fine was possible under Count Two of the indictment. Count Two provided for a fine of only Ten Thousand Dollars. Title 28 U.S.C. § 2113(d). However, in view of the fact that petitioner has not raised this issue and because the fine, as stated by the judge, was more than the statute allowed, the only possible consequence of the misinformation would have been to dissuade petitioner from pleading by fear of a larger fine. Furthermore, since no fine was imposed, it is obvious that petitioner was not misled or prejudiced by it. See Jones v. United States, 419 F.2d 515 (8th Cir. 1969), cert. denied, 398 U.S. 947, 90 S.Ct. 1866, 26 L.Ed. 2d 288 (1970).

Even assuming, <u>arguendo</u>, that petitioner's counsel had predicted a lesser sentence as alleged, that would not be sufficient to set aside petitioner's conviction. The law

is well settled that "[A]n erroneous [sentence] estimate made by defense counsel, . . . " (Court's emphasis), will not suffice to hold a guilty plea involuntary. Mosher v. LaValle, 491 F.2d 1346, 1347 (2d Cir.), cert. denied, 416 U.S. 906, 94 S.Ct. 1611 (1974). See e.g., United States ex rel. Curtis v. Zelker, 466 F.2d 1092 (2d Cir. 1972), cert. denied, 410 U.S. 945, 93 S.Ct. 1405 (1973); United States ex rel. LaFay v. Fritz, 455 F.2d 297 (2d Cir.), cert. denied, 407 U.S. 923, 92 S.Ct. 2471 (1972); United States ex rel. Scott v. Mancusi, 429 F.2d 104 (2d Cir. 1970), cert. denied, 402 U.S. 909, 91 S.Ct. 1385 (1971); United States ex rel. Bulloch v. Warden, 408 F.2d 1326 (2d Cir. 1969), cert. denied, 396 U.S. 1743, 90 S.Ct. 688 (1970). As Judge (then Chief Judge) Friendly stated in United States v. Horton, 334 F.2d 153, 155 (2d Cir. 1964), "It has been recently and we think correctly said that erroneous advice by defense counsel as to sentence does not support attack under § 2255 unless it amounts to 'ineffective assistance of counsel of such a kind as to shock the conscience of the court and make the proceeding a farce and a mockery of justice. " citing Smith v. United States, 324 F.2d 436, 439-440 (D.C. Cir. 1963). There has been no allegation that counsel representing petitioner performed in such an inept manner as to warrant the setting aside of the plea on that basis.

As was pointed out in <u>United States ex rel. Curtis</u>
v. Zelker, supra at 1098, if the Court were to vacate every
plea which resulted in a defendant being sentenced to more
time than the defendant had anticipated, it would:

"[P]rovide every prisoner with an opportunity to start out with a guilty plea, with the assurance that if he should later be disappointed at the treatment accorded him he could withdraw his plea and demand a trial on the ground that at the time of his guilty plea he had labored under the erroneous impression as to what would happen to him after acceptance of the plea."

Furthermore, the petitioner bears the burden of showing "[That the circumstances as they existed at the time of the plea, judged by objective standards, reasonably justified his mistaken impression." United States ex rel. Curtis v. Zelker, supra at 1098. As stated above, when petitioner's claim of his plea being induced by his attorney's assurances of a lesser sentence are measured against Judge Travia's repeated warnings to petitioner of the maximum penalty to which he was subjecting himself, it is clear that petitioner has failed to meet the burden of jestifying his mistaken relance on his attorney's prediction. The situation would be different if petitioner's reliance had been induced by a promise by the Judge or United States Attorney, see Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971); or, if petitioner's counsel had misinformed him that an agreement had been reached whereby he would receive a lesser sentence, see Mosher v. LaValle, supra. However, we are not presented with any of those

situations; rather, petitioner here has simply made out a case of disappointment at the sentence he ultimately received.

Petitioner's second contention is that the federal bank robbery statute (18 U.S.C. § 2113, et seq.) is unconstitutional to the extent that it purports to make bank robbery a federal crime when the bank robbers have not used the instrumentalities of interstate commerce in the perpetration of the robbery. In support of this position, petitioner argues that Article III of the United States Constitution limits the jurisdiction of the Federal Courts to only those areas enumerated in Article III § 2 and therefore, because bank robbery is not specifically enumerated therein, this Court lacked jurisdiction to try petitioner. The robbery was of a bank insured by the Federal Deposit Insurance Corporation. Congress is not without power to prohibit "any larceny" occurring within a federally protected bank. Therefore, Section 2113 et seq. is not unconstitutional nor, did this Court lack jurisdiction over the offense, See e.g., United States v. Allen, 458 F.2d 988 (3d Cir.), cert. denied, 406 U.S. 970, 92 S.Ct. 2429 (1972); Jones v. United States, supra, and petitioner's contention is devoid of any merit.

Petitioner has also submitted a "motion to amend sentence" along with his Section 2255 petition. By this motion petitioner seeks to have the Court reconsider and reduce his sentence in light of the situation he has advanced surrounding his plea. The Court reads this motion as a motion for

reduction and/or modification of sentence pursuant to Rule 35. Federal Rules of Criminal Procedure. Rule 35 states that the Court may correct an illegal sentence at "any time" and reduce a sentence within 120 days of the date of imposition. The sentence imposed on petitioner was well within the statutory maximum twenty five years permitted by the statute. Title 18 U.S.C. § 2113(d). Therefore, since the sentence is legal on its face, it is not subject to correction as an illegal sentence under Rule 35. United States v. Malcolm, 432 F.2d 809, 814 (2d Cir. 1970). See also Hill v. United States, 368 U.S. 424, 82 S.Ct. 468 (1962); Heflin v. United States, 358 U.S. 415, 79 S.Ct. 45 (1959). Furthermore, because the 120 day limitation within which to reduce a sentence is jurisdictional and cannot under any circumstances be extended, the Court may not reduce petitioner's sentence now that more than two years have elapsed since its imposition. Fed. Rules Cr. Proc. rule 45(b), 18 U.S.C.A.; United States v. Kahane, Docket No. 75-1275 (2d Cir. November 26, 1975); United States v. Ellenbogen, 390 F.2d 537 (2d Cir.), cert. denied, 393 U.S. 918, 89 S.Ct. 241 (1968).

In sum, petitioner has failed to meet his burden of alleging facts, which if proven, would entitle him to an evidentiary hearing on his Section 2255 petition. Accordingly, since we find conclusively upon a review of the files and records of the case that petitioner is entitled to no relief,

the motion to vacate pursuant to Title 28 U.S.C. § 2255 is denied and the petition dismissed.

SO ORDERED.

The Clerk is directed to forward a copy of this memorandum and order to the petitioner and to the United States Attorney for the Eastern District of New York.

Therene C-Cliff U.S.D.J.

2 UNITED STATES DISTRICT COURT 3 EASTERN DISTRICT OF NEW YORK FEB 27 1971 4 TIME A.M. 5 UNITED STATES OF AMERICA, : 6 Plaintiff. : 7 -against-72 CR 1056 JOHN STANLEY WOJTOWICZ and : 8 ROBERT ARTHUR WESTENBERG, 9 Defendants. 10 . 11 12 United States Courthouse 13 Westbury, L.I. 14 February 16, 1973 15 2:00 p.m. 16 Before: 17 HONORABLE ANTHONY J. TRAVIA, U.S.D.J. 18 19 20 21 22 THE STATE OF THE PARTY OF THE P

> GERALD I. METZ, CSR Acting Official Court Reporter

Exhibit 2

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Appearances:

ROBERT A. MORSE, Esq.
United States Attorney
Attorney for Plaintiff

By: ROBERT CLAREY, Esq.
Assistant United States Attorney, of Counsel

MARK A. LANDSMAN, Esq.
Attorney for Defendant WOJTOWICZ
66 Court St.
Brooklyn, New York

Also Present:

MICHAEL J. GILLEN, Esq.

MARTIN MORRIS
Probation Officer

THE COURT: Let us take Wojtowicz. Any reason not to?

MR. CLAREY: That's better.

THE COURT: Any objection?

MR. GILLEN: None, your Honor.

THE COURT: I think it's best that we take them one at a time.

Are you Mr. Wojtowicz?

THE DEFENDANT: Yes.

THE COURT: All right, Mr. Landsman, you first.

MR. LANDSMAN: Your Honor, the defendant,

John Wojtowicz, has an application to make under

Indictment 72 CR 1056. The defendant, John Wojtowicz, offers to withdraw his plea of not guilty to Count 2 and offers to plead guilty

to Count 2 of this indictment.

THE COURT: Mr. Wojtowicz, you are one of the defendants named in this indictment contained in File No. 72 CR 1056?

THE DEFENDANT: Yes, your Honor.

THE COURT: How old are you, Mr. Wojtowicz?

THE DEFENDANT: Twenty-seven.

THE COURT: You were twenty-seven on the

2 day this incident is alleged to have occured? 3 THE DEFENDANT: No, your Honor. 4 THE COURT: You were twenty-six, then? 5 THE DEFENDANT: Yes. I mean, I was 27. THE COURT: You were 27, then? 7 THE DEFENDANT: Yes. THE COURT: When is your birthday? 9 THE DEFENDANT: March 9th. 10 THE COURT: In other words, you were 27 11 at least during August of 1972? 12 THE DEFENDANT: Yes, your-Honor. 13 THE COURT: Now, how far did you go in 14 school? 15 THE DEFENDANT: I graduated high school. m: 56 established the state and he are the artist to be the form of the contract of the second of the seco 16 THE COURT: Have you been in any hospital for any reason in the last couple of years? 17 THE DEFENDANT: I was in the hospital. 18 for hepatitis. 19 THE COURT: Were you in any mental insti-20 tution of any kind? 21 THE DEFENDANT: Only as an out-patient. 22 THE COURT: Where? 23 THE DEFENDANT: At St. Vincent's Hospital. 24

THE COURT: When?

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THE DEFENDANT: In March of '72.

THE COURT: What were you being treated for then?

THE DEFENDANT: I attempted to kill my wife,
Ernest, and I couldn't do it and then I attempted
suicide and then he brought me to see his psychiatrist
that he was seeing at the time.

THE COURT: Well, as of now and as of the time that this is alleged to have occurred in August of '72, there has been no language barrier here; you understand, don't you, you understand English, you can read English, you know what's going on?

THE DEFENDANT: Yes, your Honor.

THE COURT: At the time of the alleged incident on August 22, 1972, you were well aware of what you were doing?

THE DEFENDANT: Yes, your Honor.

THE COURT: In other words, there was no handicap of any kind that would have induced you to do this without knowing that you were doing it?

THE DEFENDANT: Well, I did it so I could save Ernest's life, your Honor.

THE COURT: Mr. Landsman is your retained or Court-appointed lawyer?

MR. LANDSMAN: I will get to that. Right now, I am still Court-appointed, yes.

THE COURT: Mr. Landsman is your Courtappointed attorney.

THE DEFENDANT: Yes.

THE COURT: Are you satisfied with the way he's handled your case up until now?

THE DEFENDANT: Yes.

THE COURT: Do you want him to continue being your lawyer?

THE DEFENDANT: Yes.

that you wish to withdraw your plea of not guilty
to this indictment and to plead guilty to Count 2,
I assume, in satisfaction of all the counts in
this indictment, Mr. Landsman?

MR. LANDSMAN: That's correct, your Honor.

THE COURT: Do you understand that?

THE DEFENDANT: No.

THE COURT: In other words, you are pleading guilty to Count 2. You know what Count 2 is?

THE DEFENDANT: That's the --

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THE COURT: I will be going through it in a minute. But you have discussed it with Mr. Landsman?

THE DEFENDANT: Yes.

THE COURT: So you knew you were going to plead guilty to Count 2 today?

THE DEFENDANT: Yes.

THE COURT: Is this with your own free will and desire?

to Count 2, your Honor, under the understanding that if I do plead guilty to the armed robbery, the other three charges of bank robbery, kidnapping and conspiracy will be dropped as my lawyer, Mr. Landsman, has told me; that the D.A. has told him this. Only if this is true, I will do this and plead guilty, and I would like the stenographer at this time, with your permission, to read back what I just said.

THE COURT: Before you do that, that's exactly what I told you when I said you will be pleading guilty in full satisfaction of the entire indictment here which means that Counts 1, 3 and 4, will be dismissed at the time of sentence

THE DEFENDANT: Your Honor, yes.

THE COURT: Is that your understanding?

THE DEFENDANT: Yes.

THE COURT: In other words, that was the only promise that was made to you?

THE DEFENDANT: Yes, your Honor.

THE COURT: There was no promise made to you about what the Court may do on Count 2?

THE DEFENDANT: No, your Honor.

THE COURT: You know that that carries a penalty of up to 25 years?

THE DEFENDANT: Yes, your Honor.

THE COURT: Plus a fine of \$25,000.00 or both?

THE DEFENDANT: Yes, Your Honor, Lie of the Sear Your Honor, Lie of the Monor

THE COURT: You know that?

THE DEFENDANT: Yes, your Honor.

THE COURT: You can be sure the stenographer has that written down because I am making that statement and it's on the record.

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, before considering your plea or before accepting your plea, I am going to read Count 2 to you so that you know exactly what you are pleading quilty to and so that there

be no misunderstanding here as to what you are pleading guilty to.

Now, Count 2 in this indictment says:

"On or about the 22nd day of August, 1972, within the Eastern District of New York, the defendant JOHN STANLEY WOJTOWICZ," that's you THE DEFENDANT: Yes, your Honor.

THE COURT: "-- and the defendant ROBERT ARTHUR WESTENBERG and one Salvatore Natarale, know-ingly, wilfully and feloniously by force, violence and intimidation did take approximately \$37,951.00 in United States currency and approximately \$175,150.00 in Travelers' checks from the person and presence of employees of the Chase Manhattan Bank, Avenue P and

East 3rd Street, Brooklyn, New York, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, an act and offense in violation of Title 18 of the United States Code, Section 2113(a) and in the commission of this act and offense the

defendant JOHN STANLEY WOJTOWICZ," that's you,

"and the defendant ROBERT ARTHUR WESTENBERG
and one Salvatore Nataraledid assault and
place in jeopardy the lives of the said
bank employees as well as the lives of other
persons present by the use of dangerous
weapons," and that charge is made against
you under Title 18 of the United States Code,
Section 2113(d) and Title 18 of the UnitedStates

Code, Section 2. Do you understand what I read?

THE DEFENDANT: Yes, your Honor.

THE COURT: You followed me by reading the copy that's before you, right?

THE DEFENDANT: Yes, your Honor.

THE COURT: Was there anything in that count that you don't understand that you want me to explain to you?

THE DEFENDANT: Yes, your Honor, the amounts of money.

THE COURT: Yes.

THE DEFENDANT: The way I understand it, they are incorrect.

THE COURT: It says there did take approximately. So that it could be more or less.

Does that answer your question?

THE DEFENDANT: Yes, your Honor.

THE COURT: In other words, it doesn't have to be the exact dollar. It says there approximately. Now, does that satisfy you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, tell me did you, in fact, on August 22nd, 1972, with Westenberg and Natarale knowingly -- you know what "knowingly" means?

Do something knowing that you are doing it?

THE DEFENDANT: Yes, your Honor.

THE COURT: Wilfully -- and that's with a desire to do it, right?

THE DEFENDANT: Yes, your Honor.

THE COURT: And feloniously, right -that's against the law -- by force and violence
-- and you know what that means, you were pushing
a little ammunition, right?

free and the second second

THE DEFENDANT: No, your Honor.

THE COURT: It was in there.

THE DEFENDANT: Yes, your Honor.

THE COURT: Intimidation, right, did take approximately \$37, 951 in cash, approximately?
What do you say it was?

THE DEFENDANT: I walked out of the place with \$25,000.00 in cash and I don't know how much in Travelers' checks.

THE COURT: But you did go out with . \$25,000.00 that you know of?

THE DEFENDANT: Yes, your Honor.

THE COURT: You don't know how much in Travelers' checks?

THE DEFENDANT: That's right.

THE COURT: So there was cash and Travelers' checks going out with you?

THE DEFENDANT: Yes.

MR. CLAREY: There is some question. The

defendant had more money in his possession before

he left the bank. He gave some of it away in

the bank. So it could have accounted for the

\$12,000.00 difference.

THE COURT: The approximate figures are the one we are talking abot, and he's admitted to me now that he did have \$25,000.00 as he walked out on his own person plus he doesn't know what the amount was of the Travelers' checks.

THE DEFENDANT: I didn't walk out with it in my possession.

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THE COURT: How did you get out with it?

THE DEFENDANT: The hostages took all the money.

THE COURT: At your direction?

THE DEFENDANT: Yes, your Honor.

THE COURT: They were in fear, weren't they?
When they were doing things, they were doing them
at your direction because you had them under an
intimidation or fear of their lives?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that money was from the Chase Manhattan Bank at Avenue P and E. 3rd Street in Brooklyn?

THE DEFENDANT: " ;, your Honor.

THE COURT: The money was in the bank, it

was in the care and custody of the bank and you

know that the money in the bank is deposited

money that's guarantied by the Federal Deposit

Insurance Company or the FDIC, you know what that is?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that while you were doing all this, you and the other two that I mentioned did place in jeopardy the lives of the bank employees there, right, as well as other people

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who may have been present by the use of dangerous weapons?

THE DEFENDANT: Yes, your Honor.

THE COURT: You know, you are telling me by this colloquy between you and me that you did everything that this count says you did?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you aware that if you plead not guilty and go to trial, that you would be entitled to a fair and speedy and a public trial by an impartial jury?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that at such a trial, if

you did choose to plead not guilty, that you

would be entitled to compulsory process to

obtain witnesses in your own behalf?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that you would have the right to be confronted by witnesses against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you know, too, that if you did go to trial, that you could sit in the courtroom mute and say nothing, produce no evidence, produce no witnesses but leave it to

the government whose burden it is to prove you guilty beyond a reasonable doubt?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you know, too, that if you plead guilty to this count, that the Court has the power to and may send you to prison for a period of up to 25 years and fine you in a sum of up to \$25,000.00 or both?

THE DEFENDANT: Yes, your Honor.

THE COURT: You know that because you have been told that by your lawyer? Right?

THE DEFENDANT: Yes, your Honor.

THE COURT: This has been discussed

between you and yor lawyer?

THE DEFENDANT: Yes, your Honor.

THE COURT: You told me earlier that after such a discussion, you feel you want to plead guilty to this count?

THE DEFENDANT: Yes, your Honor.

THE COUT: After hearing your rights,

do you still desire to plead guilty? Look at me.

THE DEFENDANT: Yes, your Honor.

THE COURT: Has anyone made any promises of any kind to you or threats of any kind to

induce you to plead guilty other than the promise that the other counts in this indictment will be dismissed?

THE DEFENDANT: No, your Honor.

THE COURT: No one told you what I may do?

THE DEFENDANT: No, your Honor.

THE COURT: But they did tell you that I could sentence you to the terms that I just mentioned, up to 25 years and up to \$25,000.00 or both?

THE DEFENDANT: Yes, your Honor.

THE COURT: Nobody inferred to you that I might do less?

THE DEFENDANT: No, your Honor.

you voluntarily?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you making this plea of guilty because you, in fact, did commit what Count 2 that I read to you and which you said you understand alleges you committed?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Landsman, is there any reason that you know of why the Court should not accept this plea?

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MR. LANDSMAN: No, sir, no reason.

THE COURT: Did you advise this defendant, after a review of the case with him, of his rights and the possibilities of a plea and the possibility of a trial, the risk of trial?

MR. LANDSMAN: Yes, your Honor, many, many times.

THE COURT: Is he aware that one of the charges, a violation under 2113(e), could carry up to a death penalty?

MR. LANDSMAN: He was aware of it from
this morning, your Honor. As a matter of fact,
I think I just became aware of it rather recently
myself. I had understood that there was a

possible life penalty, but the fact that there
was someone whose life was taken during the
commission of this act would indicate --

THE COURT: The statute says or someone in custody as a hostage, and there was a hostage here.

MR. LANDSMAN: That's right. Under those circumstances, there is a possibility of that penalty.

THE COURT: Which, of course, would have

to be directed by a jury verdict.

MR. LANDSMAN: But I have so informed the defedant of that. He's aware of that. But I think that the defendant's decision wasn't based on that last bit of information. He had made a considered --

THE COURT: I am sure not, but that's one of the counts that will be dismissed.

MR. LANDSMAN: Yes, your Honor.

THE COURT: Do you understand what I am saying, Mr. Wojtowicz?

THE DEFENDANT: Yes, your Honor.

there any reason why this Court should not

MR. CLAREY: I know of no reason.

the colloquy between this Court and this defendant and upon his admissions of his culpability and his admissions as to the acts alleged in Count 2 that he perpetrated, the Court is of the opinion that there is a reasonable basis in fact for accepting the plea and so finds, and on such findings, based also upon the representations

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made by counsel for both sides, accepts the plea of guilty to Count 2 and at the time of sentence the other counts in this indictment will be dismissed.

Now, on the question of sentence, adjourned to await a pre-sentence report.

MR. LANDSMAN: No date is required.

THE COURT: But to await a pre-sentence report.

MR. LANDSMAN: I would ask the Court have a pre-sentence report.

THE COURT: Sentence is adjourned util

I am in receipt of a pre-sentence report, at

which time you will be notified when to come

MR. CLAREY: May bail be continued in .
the amount of \$250,000.00 surety?

THE COURT: Bail is continued.

MR. LANDSMAN: The only other thing I

would ask; your Honor, after you have had an
opportunity to complete the matter with the
other defendant, I would like to know if this
defendant could possibly meet with some members
of his family?

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THE COURT: Not all at one time.

MR. LANDSMAN: One at a time.

THE COURT: If any arrangements can be made by the Marshals for proper -- we haven't that much space.

MR. LANDSMAN: No.

THE COURT: I will leave it to the Marshals' discretion as to how to let the people in and when. But his members of the family can visit with him while he's here.

(Hearing closed.)

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UNITED STATES DISTRICS COURT 3 EASTERN DISTRICT OF NEW YORK 4 ----X 5 UNITED STATES OF AMERICA, : 6 -against-7 72-CR-1056 JOHN STANLEY WOJTOWICZ, : 8 Defendant. 9 ----X 10 11 United States Courthouse Brooklyn, New York 12 April 23, 1973 13 10:00 o'clock A.M. 14 15 Before: 16 17 HONORADIN ANTHONY J. TRAVÍA, U.S.D.J. Marie 18 19 20 21 The State of the S 22 Exhibit 3 23 HENRI LEGENDRE 24 ACTING OFFICIAL COURT REPORTER 25

Appearances:

PORRET A MORSE, ESQ.
United States Attorney
for the Eastern District of New York

BY: EDWARD J. BOYD, ESQ.
Assistant U.S. Attorney

MARK LANDSMAN, ESQ. Attorney for Defendant

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THE COURT: Does he have to be manacled. Take the shackles off of him. You have another marshal available. He certainly isn't going to do anything now. Mr. Wojtowicz, I'm asking the marshal to take the handcuffs off of you. Behave yourself or I'll have him put them back on you again. Behave yourself.

MRS. WOJTOWICZ: (Mother of Defendant) Your Honor, have mercy on my son.

THE COURT: You are John Stanley Wojtowicz?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: The gentleman standing to your left is Mr. Landsman?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: He was your Court-appointed lawyer?
DEFENDANT WOJTOWICZ: Yes, your Honor.

with him to retain him as your own retained attorney?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: Mr. Landsman, no application was ever made here for you to be relieved as his court-appointed attorney.

MR. LANDSMAN: I would so move at this time.

THE COURT: As far as this record is concerned,

up to this very moment, depending on what I do, you

are his Court-appointed attorney.

MR. LANDSMAN: That's correct, your Honor.

THE COURT: I'm not relieving you as of this time as Court-appointed attorney, but you are before me as his retained counsel.

MR. LANDSMAN: I'm his attorney either way.

THE COURT: Mr. Wojtowicz, first let me take up with you the letter that you sent me with regard to Mr. Landsman, wherein you indicated in substance, that you have relieved him of his services as your lawyer.

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: You know you have no right to relieve him as a Court-appointed lawyer.

DEFENDANT WOJTOWICZ: I know that.

THE COURT: That's the Court's job. Once the Court appoints him he stays until the Court changes that.

You knew that I had not relieved him; right?

DEFENDANT WOJTOWICZ: No.

THE COURT: Well, I'm telling you now I did not relieve him as your lawyer, but while you are awaiting sentence you made some arrangements with Mr. Landsman with regard to retaining him.

DEFENDANT WOJTOWICZ: We entered into a legal agreement on November 30th, 1972.

THE COURT: What date was that?

DEFENDANT WOJTOWICZ: November 30, 1972.

THE COURT: In your letter, "I therefore remove him as my lawyer this first day of April".

Now, which is it?

DEFENDANT WOJTOWICZ: When I gave him the money to be my lawyer was November 30, and then I wrote him and I sent you a letter.

THE COURT: Your letter to me is dated April 1, 1973.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you say as of this day, April 1
"I remove my lawyer, Mark Landsman, from representing
me. I've taken this action after much consideration
and thought."

of that letter is part of the file here, this photocopy.

Thad in my pre-sentence file.

Now, you said in your letter "He has refused to present motions in my behalf to you", meaning to me -"that I have considered vital to my defense."

Was that subsequent to your plea of guilty?

DEFENDANT WOJTOWICZ: Both before and after my plea.

THE COURT: You pleaded guilty before me on

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February 16.

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: Now, you wrote to me in April,

that's about two months later; right?

DEFENDANT WOJTONICZ: About, your Honor --

THE COURT: And what motions are you talking

about that he refused to present to me?

DEFENDANT WOJTOWICZ: Your Honor, before they took me from West Street to here this morning I asked the marshal to let me go up to my cell so I could get all the papers that I wanted to show you, and all the things that I had written down so I can explain to you exactly all the things that happened and they would not let me get the papers.

THE COURT: Let me ask you pointblank. Would you like to tell me things that would lead you to withdrawing your plea of guilty?

DEFENDANT WOJTOWICZ: I have been considering it,

THE COURT: I want to ask you pointblank now,
do you stand before me now ready to be sentenced, or
do you want to make some application to withdraw your
plea of guilty and to reinstate your plea of not guilty?

DEFENDANT WOJTOWICZ: At the present time I would like to have a new lawyer appointed to me.

THE COURT: Answer my question first. DEFENDANT WOJTOWICZ: I don't know. THE COURT: You entered into an agreement with him -- with Mr. Landsman, some time in November? 5 DEFENDANT WOJTOWICZ: Yes. 6 The COURT: From which you paid Mr. Landsman 7 some money? DEFENDANT WOJTOWICZ: Yes. 9 THE COURT: Which money was supposed to be derived from certain articles that you would write or 10 some expose that you would make with respect to this 11 case, and you received that money? 12 . 13 DEFENDANT WOJTOWICZ: Yes, your Honor. 14 : THE COURT: And out of that money you gave Mr. . Landsman some money to continue as your lawyer? 15 DEFENDANT WOJTOWICZ: Yes, sir. 16 17 THE COURT: When did he get that money? DEFENDANT WOJTOWICZ: Some time in December. THE COURT: And subsequent to that you pleaded 19 20 guilty? 21 DEFENDANT WOJTOWICZ: Yes. 22 THE COURT: And when you pleaded guilty before me, you knew what you were doing then? 23 24 DEFENDANT WOJTOWICZ: Yes. 25 THE COURT: You told me that that was your

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desire and your wish to plead guilty.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: Now, what makes you change your mind, if anything, because if you feel that you want to withdraw your plea of not guilty, I might consider that motion and let you go to trial on the indictment as it stands.

DEFENDANT WOJTOWICZ: I understand that, your Honor. I haven't been defended properly.

THE COURT: If you haven't then you ought to withdraw your plea.

DEFENDANT WOJTOWICZ: And I think you should appoint me a new lawyer.

THE COURT: That's up to me to do it, whether

I shall or not that's up to me to consider. Once a

lawyer is appointed to you that's who he will be from
beginning to end, and unless there are extenuating

circumstances which should lead me to change lawyers

I shall not.

DEFENDANT WOJTOWICZ: I guess I have to present you those reasons then.

THE COURT: Go ahead.

DEFENDANT WOJTOWICZ: On the day of my arrest at the airport, the FBI and the Port Authority police took me into custody and brought me into the Port

by them. They took my clothes off and let me stand naked and had me handcuffed, at which time they called me a lot of names that I wouldn't like to repeat here.

About half hour later the FBI came down and they started to beat me. They told me you are nothing but a little punk -- this and that -- and we want the story whose involved, all this; never once did they say to me that you have the right to remain silent, and if you don't want to say anything --

THE COURT: Where did you learn that one? Nobody ever told you that? Mr. Landsman didn't tell you that?

DEFENDANT WOJTOWICZ: I'm raising the point.

THE COURT: Did anybody tell you?

DEFENDANT WOJTOWICZ: They are supposed to state to you when they arrest you that you have a right to remain silent.

THE COURT: The Miranda warnings. You say the Miranda warnings were not given to you at the time of your arrest?

DEFENDANT WOJTOWICZ: That's correct.

THE COURT: O.K., next.

DEFENDANT WOJTOWICZ: Number 2, when I first
met my attorney, which was that same day, I went downstair

and I talked to him, and I think the day after he came and saw me and we talked again, and he suggested that I should cooperate with the FBI, it was the only way that I had a chance. My case was very unusual and he felt the only way we had a chance was for me to cooperate completely and try and get as less time as I could, and we agreed that my defense as of then was going to be by reason of insanity, and I was going to plead not guilty.

THE COURT: You know that was opposed by your lawyer to this Court and me -- sent you for an examination.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And not by anybody else, but by hospital doctors and you know what the report was.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: Mr. Landsman was given a copy of that report.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And he showed it to you?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And that report showed Mr. Landsman that you were capable mentally of standing trial.

MR. LANDSMAN: And he could confer with counsel.
DEFENDANT WOJTOWICZ: Then we had the hearing

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that you just explained. I went to the observation. Then we came back from observation and I wrote him another letter, I wrote him a letter, my lawyer, Mr. Landsman -- I wrote him a letter explaining --I didn't think I received unbiased and impartial psychiatric examination at Kings County Hospital; that my examination was not as other inmates at that institution received. The standard procedure, as I understand it, is that you saw two doctors and they evaluated you and made a report, and tests were run. No tests were run on me and I only saw one psychiatrist for approximately 45 minutes to an hour at which time when I did see the psychiatrist, he told me whatever I said to him would be confidential and that my being a homosexual did not affect his opinion of me because he didn't consider a homosexual to be a sick person; so you could see that he was biased and prejudiced in control of the state of a surface for the section of the section o my favor, which is unusual, but that's the way it is because the psychiatric community today considers -he told me whatever I told him would be kept confidential and I found out later on -- he told my co-conspirator if that's the word -- when I talked to him that I lied to him, and then he told Bobby some of the things that I said, and when I saw Bobby later on he told me about it. So right there he was unethical. The thing of

confidence and privacy -- and I think he should challenge the report when it came before you on those grounds alone.

THE COURT: If he went to trial that would be a challenge. He never withdrew that defense but you chose to short circuit a trial and to plead guilty.

DEFENDANT WOJTOWICZ: I understand that, your Honor.

THE COURT: He never gave up that defense for you.

DEFENDANT WOJTOWICZ: At that time I asked him to petition the Court and send me to Springfield, Missouri, so I would get --

THE COURT: You may go to Springfield if you go to trial. That has nothing to do -- the examination was conducted where I said it should be conducted.

that I wrote after that, that I wanted him to challenge the findings of the doctor.

THE COURT: To Mr. Landsman?

DEFENDANT WOJTOWICZ: Yes, and I wanted him to put in a motion to send me to Springfield where I coulcet an unbiased examination, and it would be a proper examination and I would see 3 doctors and they would run a series of tests. He told me that he didn't think

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you would approve the motion but he would make it. I asked him several times to make the motion. I do not know if he made the motion. I don't have any record of any motion or anything. I guess you can check and tell me how many times he put it in but I'm not sure if he put it in officially, that is, and everytime I saw him I always asked him to put in for a reduction of bail. I don't know how many times he put in a reduction of bail. I always asked him to put in for one. The agreement that we made, a signed document, and he would receive \$5,000 for my defense to hire psychiatrists, to hire other experts and a total of \$7,500, \$2,500 would be given to Ernest Aaron for his sex-change operation. Then we had a verbal agreement stating if I pled guilty he would retain \$3,500 and return \$1,500 out of that \$5,000. O.K. Then Ernest was convinced that I should plead guilty because it would be the only way that I could get lesser time and be out sooner. My wife wasn't too sure, neither was my mother. They thought a trial would be better, then they started wavering back and forth and I was put under a lot of pressure. Ernest said if I loved him he would leave me because he wasn't going to stand around 7 or 8 years -- go to trial and be found guilty on everything. Then he came with Mr. Landsman to see

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me at the jail. That day I gave Mr. Landsman permissio. to enter into plea bargaining -- prior to that time I was offering to plead guilty to the armed bank robbery -- I don't know if it was back in August or September but that was the original offer. I told Mr. Landsman I would be willing to plead guilto to bank robbery, Count One of the indictment, because it carried a 20-year sentence, and for him to try and get it for me. He explained what the difference was. It's only 5 years. He said it doesn't make that much difference if you plead guilty to Number One or Two. I said it makes a big difference, Count One is a non-violent and when the Parole Board looks at that they go a lot harder on you; so I was hoping that he could get me the first count to plead guilty to. I signed a document. At that time I told him I wanted him to reach money to my wife Carmen, the sum of \$1,000. said he would only do it on the day that I pled guilty I said, we had an understanding if I pled guilty he would release that \$1,500. I said as of now I want \$1,000 released for my wife. I sent him an authorization through the mail and he never sent her the money. When I talked to him he said, "I will give her the money on the day you plead guilty, on the 16th of February. " I came down here and I pled guilty so Ernic

wouldn't leave me and I would be with him and Carmen sooner rather than if I went to trial.

After I got here I found that we were facing the death penalty. Prior to that I didn't know anything about that. And it came as a great shock and surprise to me that we were facing a death penalty that day.

As soon as we got in the bullpen my lawyer told me what you told him, because you found out that we were facing the penalty now. I saw you, I came before you. You asked me a question, "Are you satisfied with the way your lawyer has been handling the case?" and for you to accept my quilty plea I would have had to have said yes; so I would not lose Ernie I had to say yes even though I didn't agree with it.

THE COURT: You didn't tell me at that time that you were pleading only because you didn't want to lose Ernie.

DEFENDANT WOJTOWICZ: No.

THE COURT: You told me that you were satisfied and that you wanted to plead guilty because you in fact did commit the acts that Count Two, to which you pleaded guilty, you alleged you committed.

DEFENDANT WOJTOWICZ: That's right.

THE COURT: Is that so or is it not so?

DEFENDANT WOJTOWICZ: That's so.

THE COURT: Do you want to change your plea?

DEFENDANT WOJTOWICZ: I don't know, your Honor.

THE COURT: If you want to change your plea I'll give you the opportunity to change your plea and withdraw your plea of guilty, and if you want to withdraw your plea of guilty, that's all right. I'll grant you that opportunity and you go to trial on all three counts or four counts.

MR. BOYD: Four counts.

DEFENDANT WOJTOWICZ: I did not understand why you cannot appoint me a new lawyer and I can go over with this new lawyer, then if I decide to take back my plea and so inform the Court.

going to go over that; they you'll want another one and another one. The Court just doesn't give you lawyers to meet with your approval. The Court appoints a lawyer, and when the Court appointed Mr. Landsman I think they appointed a pretty good lawyer. He has a fine reputation at the bar. I didn't appoint him -- I assume you are appointed by the magistrate in this case?

THE COURT: : Let me hear you a minute. I sent you a copy that he sent to me. I asked you to talk to him and discuss it with him and see what's

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to it. Very frankly whether I ought to appoint a lawyer to him -- I don't think he's entitled to it, but on the basis of the law, how it is, and the Court doesn't ordinarly change lawyers, if what he claims here, if there is any substance to it, maybe there might besome circumstances why I ought to change lawyers.

MR. LANDSMAN: Your Honor could be assured I
represented this man in a proper manner. I negotiated
with the U.S.Attorney's office to get a plea for him.
In addition, I furnished the Kings County Hospital
with loads of documents to try and convince the Kings
County psychiatrist that this man was not in his right
mind, apparently they disagreed with me. It was after
that that I discussed with the defendant his pleading
guilty. It was at his request that I brought his male
wife to West Street to get the warden to agree to
further negotiate the possibility of pleading in this
case.

THE COURT: Was that at his request?

MR. LANDSMAN: He would not discus whether he wanted to go to trial, whether he wanted to plead guilty unless this male wife was present; and I say to you now, it was with extreme difficulty that I had to convince the warden to permit a contact visit with this male wife, and one of the requirements were that I

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remain -- it took over an hour. And during that hour there was a discussion about a plea on it, and I insisted that the defendant authorize me in writing to negotiate for a plea on his behalf, and I have that in writing; and in addition, as far as the financial arrangements are concerned, there should be some comment on it so there be no misunderstanding.

I negotiated on behalf of this defendant with people who are producing a movie based on the incident on this bank holdup. Following the negotiations they said a lot of money was to be paid to the defendant to use the story. The movie company was giving him this money. It was to be used for his defense. We entered into an agreement where I was to retain part of that money to use in his defense, and certainly in the event for retaining of psychiatrists, experts.

Naturally when the defendant finally agreed to plead guilty, part of that money was not required because no experts had to be hired, and I agreed to take less.

Fortunately for me I have these things in writing. I would find no difficulty in settling my differences with the family.

THE COURT: That has nothing to do with this case. That's a matter that you'll take care of later on.

MR. LANDSMAN: What really troubles me, your Honor, I thought I had done my level best for this defendant in representing him, and it was only at the very end, somewhere near the beginning of April, that he turned against me and decided that I was not representing him properly. I attribute this to maybe some fellow inmates that might have been advising him, and some advice that he got from laymen visiting him, and unfortunately attempted to speak in his behalf to newspaper reporters and whatnot. It was a tough thing to battle against because a lawyer has client-attorney privileges and I just can't speak my mind and speak about this case to newspapers.

THE COURT: I order you not to.

MR. LANDSMAN: And you would chastise me.

THE COURT: We don't try our cases through the press or on television. I hope nothing will transpire before this case in that regard.

MR. LANDSMAN: I hope so too. Reporters have a tendency to write material that they are given.

THE COURT: They have a right to come into a public courtroom and take down whatever they want, and select whatever they want. I only hope that they too will take into consideration that this fellow is entitled to a fair trial and he's entitled to a lot of

privileges and rights, and sometimes these exposes don't take that into consideration; before you know it they dirty up the minds of a lot of people.

MR. LANDSMAN: The Court was the main party that I was concerned about being influenced one way or the other, and it seemed to me, looking at the aspects in this case, if the defendant could obtain a plea to one count of this indictment it would be advantageous. He was facing not only life imprisonment but as he learned later on, there was a possibility of the death penalty being imposed under the E count.

Frankly, my problem, the defendant won't talk to me.

At your Honor's suggestion I went to the jail to see him, he refused to discuss his reasons for dismissing me. He said he would make them known in open Court to your Honor.

Here we are, I think he's made some reasons known.

The defendant has asked me to do a lot of things for him which were not proper as a lawyer. I just couldn't do these things. Prankly, your Honor, a good deal of his problems have arisen because of his relationship with his male wife. I've tried to explain to him that he's facing terrible punishment. He must do the most he can to reduce it. I thought this plea

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would be a good thing for him, and he agreed with me, and he took the plea. Frankly, I was ready to come in and speak on his behalf as far as sentencing procedure, but under the circumstances I would think possibly since the defendant doesn't want to talk to me about anything any more, perhaps it would be in his best interests to have another lawyer. Give him an opportunity to consult with another lawyer.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, I have heard nothing which goes to the heart of the matter that we are here on today, that is the guilt or innocence of this defendant. I have not heard any protestations of innocence as a reason for withdrawing his plea of guilty. At the time the plea of guilty was entered in this case, there was a very thorough and complete finding of fact pursuant to Rule 11; at that time the defendant stated that he did commit the bank robbery and was entering a plea of guilty and for no other reason.

We are here today hearing many things that do not go to the guilt or innocence. I'll withhold the withdrawal of the plea because of the additional time and burden it would place on the Court and on the U.S.

Attorney's office. We must move our cases through as rapidly as we can. We have 2,200 defendants awaiting

trial at this particular moment. I do not look forward to trying this case. However, if the Court allows Mr. Wojtowicz to withdraw his plea of guilty, the government would be ready to try him at any time that the Court directs on all four counts of the indictment.

THE COURT: He's not asked to withdraw his plea; he said he doesn't know. He wants time to think about it. I do think that any delay would certainly be a delay occasioned by his own actions.

Mr. Landsman, let he ask you this. You want to be removed as a lawyer here?

MR. LANDSMAN: Frankly, I would do anything the Court requests me to do. I am willing to try and work with John Wojtowicz. I feel that I can help him bet frankly, if the man doesn't want to talk to me, I can't help him, it's as simple as that. I think something ought to be --

Landsman any more?

MRS. WOJTOWICZ (mother of defendant): Think about it, John.

THE COURT: Who are you, anyway?

MRS. WOJTOWICZ: He doesn't know right this minute, I think he's mixed up.

THE COURT: Mr. Wojtowicz, you want me to dis-

charge Mr. Landsman?

DEFENDANT WOJTOWICZ: No.

THE COURT: You want to talk to him again?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: You want me to hold up the sentencin; until you talk to him again?

DEFENDANT WOJTOWICZ: No.

THE COURT: You want to be sentenced today?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: Well, I'm not going to, I want you to talk to Mr. Landsman again.

Mr. Landsman, I sent out to you earlier today
the pre-sentence report, I've had an opportunity to go
over the pre-sentence report.

MR. LANDSMAN: Maybe he will now -- I have had an opportunity to go through it thoroughly.

reconsider your guilty plea here? Would you like to think about it and then make an application to the Court? I'm not telling you I'll grant it because you have said nothing thus far that would let me grant you an application to change your plea here, but I'll grant you an opportunity to think about it again and discuss it again with your lawyer or with any member of your family and give you an opportunity to make that

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application, if you want to make that application. 2 DEFENDANT WOJTOW CL: I thank you, your Honor. 3 I don't think it's necessary any longer. I don't want to withdraw it. 5 THE COUPT: Tell me very frankly, were you 6 telling the truth when you pleaded guilty to a count 7 here? Were you telling the truth on that day? DEFENDANT WOJTOWICZ: Yes, sir. 9 THE COURT: And you pleaded guilty before me to 10 Count Two of the indictment, which carried a maximum 11 punishment of 25 years in prison? 12 DEFENDANT WOJTOWICZ: Yes. · 13 THE COURT: And at that time I want very thorough! 14 into your rights and privileges? 15 DEFENDANT WOJTOWICZ: Yes. 16 THE COURT: And you indicated at that time that 17 you wanted to plead guilty? in control attributed define a control through a control of the co - 1- 1- 18: DEFENDANT WOJTOWICZ: 19 THE COURT: And you in fact were guilty of the 20 crime charged in that count? 21 DEFENDANT WOJTOWICZ: Yes. 22 THE COURT: You still feel the same? 23 DEFENDANT WOJTOWICZ: Yes. 24 25 change your plea?

THE COURT: Apparently there is no reason to 111

1	DEFENDANT WOJTOWICZ: Correct, your Monor.
2	THE COURT: If I give you an opportunity to sit
3	down and talk to your mother, with your lawyer, and
4	recess this sentence a little later today, would you
5	want that? Would you like to talk to your mother?
6	DEFENDANT WOJTOWICZ: Yes.
7	THE COURT: Would you also like to talk again
8	to Mr. Landsman?
9	DEFENDANT WOJTOWICZ: Yes.
10	. THE COURT: Because I'm not going to consider
11	changing Mr. Landsman at this time until I know what
12	your final decision is, whether or not you want to
13	. apply for withdrawal of your plea.
14	DEFENDANT WOJTOWICZ: Yes.
15	THE COURT: Did I make it clear to you?
16	DEFENDANT WOJTOWICZ: Yes.
17	THE COURT: Who else do you want to talk to?
18	How about your wife I'm talking about Carmen.
19	DEFENDANT WOJTOWICZ: I understand that.
20	THE COURT: You have children with her?
21	DEFENDANT WOJTOWICZ: Yes.
22	THE COURT: Would you want to talk to her too?
23	DEFENDANT WOJTOWICZ: Yes.
24	THE COURT: Mr. Landsman, can I put you to the
25	task I haven't relieved you of your duties, I know

you are not looking to be relieved. I'll put it off as long as you think it would be necessary -- but today -- as long as you want to give him an opportunity to discuss it with you and his mother, and to give him a full earing as to what his gripes are and let him know if there is any basis for moving for a change of plea here, and if he has I'll take his word for it -- his plea of guilty -- and let him restate his plea of not guilty and we'll set a trial date. 2 o'clock.

MR. LANDSMAN: 2 o'clock, your Honor.

THE COURT: Now you make arrangements, Mr.

Landsman, for this young man's mother and this young
man's wife to talk, anyway you want or anyway he wants,
give him a preference, and when you are through you
send word to my chambers and I'll come back and will
do whatever we have to do.

MR. LANDSMAN: Thank you, your Honor.

matter.)

(After recess.)

THE COURT: May the record indicate that earlier a discussion on the record, it appeared that there might be some question as to whether or not this defendant ought to reconsider his plea, and for that reason I recessed to give the defendant an opportunity

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Landsman; with his mother, and with his wife, and for that purpose I also sent out to Mr. Landsman again, a copy of the pre-sentence report, together with the papers that I had which make up my pre-sentence file. The file itself on this case was available to Mr. Landsman because it's a public document. Now, Mr. Landsman, it's past 2 o'clock, have you had an opportunity to discuss this with Mr. Wojtowicz?

MR. LANDSMAN: Yes.

THE COURT: Would you tell me first what transpired since we recessed?

MR. LANDSHAN: Well, your Honor, I spoke to the defendant and the defendant had an opportunity to speak to his mother and to his wife, Carmen, and I obtained a copy of the pre-sentence report from your Honor, and the defendant and I went over it together page by page and examined it, and then I returned it to your Honor and we are now prepared to go ahead with the sentence.

THE COURT: Mr. Wojtowicz, during the conversation that occurred between your mother, your wife, your lawyer, Mr. Landsman, during the recess, did you have occasion to again think about whether you ought to withdraw your plea?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: What is your desire with respect to that?

DEFENDANT WOJTOWICZ: I wish to plead guilty.

THE COURT: You want the plea that you made
previously to stand?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: You are sure you know what you are doing?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: Your request for a change of lawyer, how do you feel about that?

DEFENDANT WOJTOWICZ: I'm withdrawing that request.

THE COURT: You have talked to Mr. Landsman again?

DEFENDANT WOJTOWICZ: Yes.

earlier about your problems with Mr. Landsman are something other than this case, namely your question of your fee or your contract with him for the other book or movie, whatever it is, those rights, that, of course you have. You know you have a full right to proceed against Mr. Landsman if you wish, if you think he should not have gotten that money or he should have gotten less, that's a problembetween you and him. I'm

1	interested in his representation of you in this case.
2	Are you satisfied that he's doing the best he knows he
3	and you want him to continue as your lawyer in this
4	sentencing?
5	DEFENDANT WOJTOWICZ: Yes, your Honor.
6	THE COURT: Tell me when you say yes you want
7	him to continue, you are satisfied with him?
8	DEFENDANT WOJTOWICZ: Yes.
9	THE COURT: And you know that you pleaded guilty
10	to Count Two of this indictment contained in File No.
11	72-CR-1056, on February 16, 1973, before me?
12	DEFENDANT WOJTOWICZ: Yes.
13	. THE COU.T: And that's the one that charges you
14	with bank robbery by force and intimidation and violen;
15	DEFENDANT WOJTOWICZ: Yes.
16	THE COURT: That's where guns were involved.
17	DEFENDANT WOJTOWICZ: Yes.
18	THE COURT: That's the reason for the 2113
19	Section 2113, Title 18, has to do with bank robbery;
20	you know that?
21	DEFENDANT WOJTOWICZ: Yes.
22	THE COURT: And then, of course, the 2113(d) by
23	force and violence, and with force of arms.
24	DEFENDANT WOJTOWICZ: Yes.
25	THE COURT: And that's the one that subjects you
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to a period of up to 25 years plus a fine or both.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: You understand that?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: You know what you were doing at the time you pleaded guilty before me?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you were made aware of your legal rights by me, weren't you?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: You were told at that time that you could plead not guilty and that you would be entitled under such conditions to have a trial before a jury.

DEFENDANT WOJTOWICZ: Yes.

of people who would be sitting as an impartial jury and you would be entitled to such a trial, speedily; you were told that by me, weren't you?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you were told also by me, if you did go to trial that you would have the right to compulsory process to force people to come in by subpoema. to come in on your behalf.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you would be confronted to have

witnesses against you.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And did I also tell you that you could in such a case offer no proof, produce no witnesses, but just sit back mute and let the government whose burden it is to prove you guilty beyond a reasonable doubt.

DEFENDANT WOJTOWICZ: Yes, sir.

THE COURT: I am telling you that to you now.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And I told you then too if you pleaded guilty that you would be subjecting yourself to a possible prison sentence of up to 25 years, and a fine of up to \$10,000 or both.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And then I asked you also, knowing your rights, do you still desire to plead guilty?

DEFENDANT WOJTOWICZ: Yes, Sir

THE COURT: And did you say yes in answer to that?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And then, did I discuss the facts surrounding the crime with you?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And during that discussion, that

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colloquy, between you and me, you admitted to me that
you were part and parcel of that crime and that you
were the one who had picked the bank out and all that;
did you not?

DEFENDANT WOJTOVICZ: Yes, your Honor.

THE COURT: And then I asked you, are you making that plea voluntarily, and you said yes; is that true?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And I asked you, are you making that plea of guilty because in fact you are guilty because you did commit the acts and allegations in that Count Two of that indictment, and you said yes; is that correct?

DEFENDANT WOJTOWICZ: Correct, your Honor.

I did -- did I not ask you at that same time that I would like to know from you if anyone forced you to or threatened you in any way, in any way induced you to plead guilty to that count other than your own voluntary act, and you said, no one did force you at all; is that correct?

DEFENDANT WOJTOWICZ: That is correct.

THE COURT: And at that time it was made known to the Court too if you did plead guilty to Count

1 Two that the government at the time of sentence would dismiss Count One, Three and Four? 3 DEFENDANT WOJTOWICZ: Yes. THE COURT: And that was part of your under-5 standing; is that right? DEFENDANT WOJTOWICZ: Yes. 6 7 THE COURT: And you recall at that time I asked your lawyer whether he had any reason as your lawyer, 8 9 to indicate to the Court why the plea should not be accepted, and your lawyer at that time said there was 10 no reason that he knew of, after discussing the case 11 with you. 12 13 DEFENDANT WOJTOWICZ: Yes. THE COURT: Now, I'll ask you all those things --14 all those things were so as I've now repeated them to 15 you? 16 17 DEFENDANT WOJTOWICZ: Yes. the street with the first with with the street with the street with the street with 18 THE COURT: Is it now your desire to continue and remain with your plea to Count Two? 19 DEFENDANT WOJTOWICZ: Yes, your Honor. 20 THE COURT: Now, I ask you, you are John 21 Stanley Wojtowicz, one of the defendants named in this 22 23 indictment contained in 72-CR-1056? 24 DEFENDANT WOJTOWICZ: Yes. 25 THE COURT: And the gentleman standing to your

THE COURT: And you indicated too if you continued to be his retained lawyer you would file no application under the Criminal Justice Act in view of the fact that you were retained by him, and you received a fee by him.

MR. LANDSMAN: That's correct.

THE COURT: So therefore that claim is one that Mr. Landsman waives, that's only insofar as the Criminal Justice Act is concerned.

MR. LANDSMAN: Yes, sir.

THE COURT: Any arrangements you have with him as to a fee on a personal basis as toa personal retainer, that's between you and him, and this Court has nothing to do with that.

Mr. Landsman stands before me as your attorney when you retained him, and as your Court-appointed lawyer.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you want him to be your lawyer at the sentencing?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: Are you satisfied now that you have discussed this thing thoroughly and since I have given you this opportunity, are you satisfied how he has handled this case with you?

DEFENDANT WOJTOWICZ: Yos, sir.

THE COURT: Now, Mr. Landsman, earlier this morning I sent out to you my confidential pre-sentence report which I received from the Department of Pro-bation.

MR. LANDSMAN: Yes, sir.

THE COURT: And I asked you at that time that you looked it over yourself, discuss it with your client or whoever you wished to discuss it with and be prepared to talk to me about it at the time of sentence.

MR. LANDSHAN: That's correct.

THE COURT: And then again when we recessed I still sent it out to you in view of the fact that you were going to discuss this thing with his family and him. I would want you to look at it again and talk with the defendant about it. Have you done so?

THE COURT: Is there anything in that report that is in any way contrary to your understanding of the facts in this case?

MR. LANDSMAN: As far as I can see, there is nothing in the report of any notable difference as far as the defendant's conduct or participation is concerned. I might ask the Court to ask the defendant.

THE COURT: Right now -- did you talk to him about this report?

MR. LANDSMAN: I not only talked to him, I went over with the defendant page by page.

THE COURT: You saw this report that Mr.
Landsman had that he received from me?

DEFENDANT WOJTOWICZ: Yes, sir.

THE COURT: Did he go over it page by page?

DEFENDANT WOJOWICZ: Yes.

THE COURT: Is there anything in this report that you think does not state fairly the facts as you know them as your participation?

DEFENDANT WOJTOWICZ: One or two little items that they got wrong.

THE COURT: What?

on page 3 or 4 -- it says that I held them for 23 hours.

We weren't in the bank that long or at the airport that long.

THE COURT: That isn't very significant anyway, but there was a long period of time that transpired.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: From the time you went in until it ended a goodly number of hours transpired?

DEFENDANT WOJTOWICZ: Yes. Then the next thing

they called me a sexual deviate.

that people make with regard to defendants and this, of course, was a characterization made by someone who made the report, and, of course, as I indicated, a person's personal sexual life is his business and not mine. You have a right to consider yours any way you want, but the thing that I'm interested in is whether you are involved in this crime to the extent as stated in this report. Can you answer that?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: Is that correct?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: The statement then is correct?

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: When you go into this report you made certain statements to the Probation Department?

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THE COURT: And that's indicated on page 7 of this report?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: Are those statements that you made correct?

DEFENDANT WOJTOWICZ: Yes, sir.

THE COURT: And that's the most important of this report, what you said you were involved in, not what somebody thinks.

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DEFENDANT WOJTOWICZ: Yes, your Honor.

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THE COURT: And that's what I'm taking as far

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as this report is concerned.

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judgment -- will the record indicate that attached to

Now, Mr. Landsman, is there any reason why

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the pre-sentence report is a copy of the original --

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not a copy of the report -- the copy -- but in the file

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is an original medical report signed by Doctor Chaitin,

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and that report was rendered to me as a result of an

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order that I made previously in this case pursuant to

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an application made by Mr. Landsman, the attorney for

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this defendant, who indicated that there might be a

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question of mental ability to commit a crime et cetera,

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and I immediately ordered this examination; and the

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reports of the hospital and the doctors were sent to me

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confidentially, and they were scaled by me in this file

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to be kept confidential until a later date when some

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question arose, and at that time it was decided that

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the matters would then be made part of the file and not sealed; am I correct?

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MR. LANDSMAN: That's correct.

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THE COURT: Is that correct, Mr. Wojtowicz?

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DEFENDANT WOJTONICZ: Yes.

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THE COURT: Those reports were made on a motion

before me.

MR. LANDSMAN: Yes.

THE COURT: And as a result, these papers were then declared unsealed and opened.

MR. LANDSMAN: Yes.

THE COURT: And a copy of that report, a photocopy of that report is attached to this pre-sentence
report, which is composed of 5 pages and gives a
complete history, without going into it now because
you have seen that?

You've seen it, Mr. Landsman, and you have spoken to Mr. Wojtowicz about it?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And attached also to my presentence file was a letter that I received from Ernest -no date but was received on March 21, 1973. I indicated
on the top of the letter that I received it by mail

DEFENDANT WOJTOWICZ: Yes, your Honor.

THE COURT: And attached to that report was
elso a letter that I received from you dated -- not
dated either, but received by me, dated March 25, 1973,
which is a letter written to me by your wife, Mrs.
Carmen Wojtowicz, which you had a chance to discuss
with the defendant, and you saw it, Mr. Wojtowicz.

DEFENDANT WOJTOWICZ: Yes.

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THE COURT: That was part of the pre-sentence report; and a copy of the letter you sent me, dated April 1, 1973, which was the subject of our conversation this morning before we recessed; is that right?

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DEFENDANT WOJTOWICZ: Yes.

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you and Mr. Landsman and your mother and wife; right?

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DEFENDANT WOJTOWICZ: Yes.

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THE COURT: And that was talked about between

THE COURT: And I have also a letter which I received, while it's dated April 2, 1973, on the letterhead of St. Regis Roman Catholic Church. You had an opportunity to see that letter?

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And then attached to that letter which I received from Mr. Randolph Wicker.

DEFENDANT WOJTOWICZ: Correct.

THE COURT: On the letterhead of Uplift, Inc., 44 Butler Place, Brooklyn, New York, and that letter is dated April 7, 1973.

DEFENDANT WOJTOWICZ: Yes.

THE COURT: And you saw the article that he enclosed with his letter, which appeared in Life magazine under the names of P. H. Klug and Thomas Moore; right?

DEFENDANT WOJTOWICZ: Right.

THE COURT: You saw that?

DEFENDANT WOJTOWICZ: You're right; yes, your Home

THE COURT: Now, Mr. Landsman, is there anything else that ought to be brought to my attention other than anything else that we have talked about? I think what also ought to be mentioned is your letter to me dated April 12, 1973, which is in the file, which is the letter you sent me in answer to my request that you look over the letter he sent me requesting your dismissal, and I asked you to talk about it with him. I don't know if you showed him that in the recess, but I think he ought to see it.

Does he want to rest for a few minutes?

(Defendant Wojtowicz looking at the letter.)

THE COURT: You saw this letter that Mr.

Landsman had written to me and this letter was dated April 3, 1973, in answer to a letter written April 6, where I asked him to take up your letter with you.

DEFENDANT WOJTOWICZ: Correct.

THE COURT: Now, Mr. Landsman, is there any reason why judgment should not be pronounced against this defendant, John Stanley Wojtowicz?

MR. LANDSMAN: No reason.

THE COURT: Do you have any comments to make

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with respect to what the sentence should be or what
the terms and conditions of the sentence should be,
and if you have, you may speak, and if you think there
are other papers that this Court should refer to which
was incorporated in my pre-sentence file, do not
hesitate to refer me to them.

MR. LANDSMAN: As far as the defendant's background is concerned, I'm not only certain, I'm sure I
had an opportunity to look at it. The Probation Report
is clear and it's complete. However, I would like to
emphasize a couple of items in the defendant's behalf
which I employed ze merely for purposes of mitigation.

This defendant is a young man who has never been in any prior trouble with the law, never been arrested, never been convicted of a crime. He had a fairly decent bank teller's job for a number of years with the Chase Manhattan Bank.

part of his service was in Viet Nam and he was honorably discharged.

I might point out that a good deal of his
problems have arisen from his taking up with this male
wife of his, and this created a problem, mental problem
with him that didn't exist before when he was married
and had two children, but apparently that marriage

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didn't survive too well and after that point he apparently got himself into difficulty with persons of other persuasions. At any rate, as far as the crime itself is concerned, I think it becomes clear that although there is no question that John Wojtowicz was involved in this crime, I think he ought to be given some consideration for the fact that he at one point during the commission of this crime was willing to give up and surrender. He was fearful that his co-defendant who — the one who was killed would in some way harm the hostages.

This defendant once spoke to Mr. Morse outside the bank. Mr. Morse tried to persuade him to give himself up. At the time he told me that he was afraid if he did do that that the co-defendant would harm the hostages in the bank, and from what I could learn from the interviews with the various hostages in the case, this seemed to be the fact. John Wojtowicz was the good guy of the two that were in there; the one who they were fearful of was Natralie (phonetically).

THE COURT: You mean the good guy or the better of the two?

MR. LANDSMAN: Question of degree. Once Natralie was shot of course he surrendered immediately.

THE COURT: That was on the way to the airport.

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That was after everything was over and he was sceking an escape.

MR. LANDSMAN: I might also point out aside from the fact that he is pleading guilty and sparing the government the expense of going through a lengthy trial, the report indicates that it was actually his information that led the government to apprehend others that were involved — one other that was involved in this case. Your Honor, again, as I said, he's a man without any prior blemishes on his record, and for that I feel he is entitled to some consideration.

What he did he cannot change that now, I would ask the Court under the circumstances to be as lenient as possible with the defendant and give him an opportunity where he could make a good substantial citizen out of himself.

THE COURT: Mr. Landsman, you are an experienced criminal lawyer. This is a very serious crime. When you are robbing a bank at gunpoint and holding hostages for a lengthy period of time, and in the course of this crime someone is killed. There were guns used. From my understanding it was he when he first went in, I think it was Natralie who went to the bank manager and said, "This is a holdup," and he went over the teller's booth and began to fill his attache case with the

money that was in the booth.

MR. LANDSMAN: I believe that's the way it was.

THE COURT: And he was all the way in on this thing.

MR. LANDSMAN: I don't think there is any denial of that.

THE COURT: We are dealing here with a very serious crime. Of course, much of what you tell me has to do with his sexual life, so-called male wife, whose letter is in my file here. These are unfortunate things, it's true, but certainly he doesn't have the right to go in and rob a bank at gunpoint to obtain money solely for the purpose of seeing to it that this male wife gets her operation to make her a female.

There are ways of getting that money, like work.

He found it easier to go to a bank.

should not now be pronounced against you?

DEFENDANT WOJTOWICZ: No.

THE COURT: Do you have any comments to make with respect to what the sentence should be, what the conditions of the sentence should be in addition to what Mr. Landsman said to the Court? If you wish to stay seated you may.

DEFENDANT WOJTOWICZ: Your Honor, love is a

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very strange thing and some people feel it more
deeply than others do. I love my wife, Carmen, very
much; I love my daughter; I love my son and I love
Ernie and I need all of them. I care about them very,
very much. What happened in the situation with Ernie
is that he attempted suicide several times before
because he couldn't become a woman. He was a woman
trapped in a man's body and he wanted to get his
genders switched, and I tried every way I could to get
the money for him legally.

I went looking for jobs. I did everything. I just couldn't do it. Nobody would hire me because they knew I was gay. I kept trying to get the money, and I couldn't so when he attempted suicide again there was nothing that I could do. I told him I would try to have it for his birthday and when his birthday came I didn't have it. The next day he took an overdose and he was taken to the hospital and he died and they brought him back to life again, and that hurt me very much, your Honor. And I promised him that I would get him the operation as soon as I could, and that's when I made the decision to rob the bank, your Honor, because I knew I couldn't watch him 24 hours a day, sooner or later he would try it again and maybe the next time he would succeed and I didn't want to lose

him.

I know Ernie doesn't love me as much as I love him, but I do love him and to save his life I would do anything. I know that I was wrong for robbing the bank and I was wrong for the things that took place in the bank in threatening people's lives and everything, your Honor; then you have to go back and you have to look at it and decide what's more important, money or a human being, that's what it breaks down to, a human being is more important than money. If I could go get a job and work for two, three years and somebody would give me \$10,000 I would do it, but nobody would give me a job, nobody would say go here and do this and I'll give you the \$10,000 for the operation.

For the two years and nobody would do it;
everywhere I went for a job they wouldn't do it. They
would give me a job for \$1:10 anchour, \$1.25 an hour;
that's not enough to live on, your Honor, and our
basic principle in the society there is nothing more
important than a human life and Ernie's life is very
important and I would do anything to save it. So I
went to the bank after Ernie attempted suicide that
Sunday, and he was taken to Kings County Hospital and
they wouldn't release him, and I knew sooner or later

he would succeed so I had to get him the operation, and that's the day I decided to rob the bank and I went in and we robbed it. I know it was wrong but what's money compared to a human life. A human life is the most precious thing in the world. Now, Sal died at the airport, and I don't think it was necessary, your Honor. When they pulled that shotgun away from him he was an unarmed man, they shouldn't have pushed the pistol in his chest and just kill him. They didn't do it to me, they shouldn't have done it to him, but they did, they were wrong.

I have a beautiful wife named Carmen.

THE COURT: Did you think of her when you decided to rob the bank. You were robbing the bank because of this person named Ernest Aaron, more important to you than your wife at that time.

DEPENDANT WOJTOWICZ: It's not the point of

its more important, if it was the other way around and

it was Carmen who needed it or Dawn had have it and I

knew that they were dying, if I couldn't get it for

them then I would do it for them. It just happened

that it was Ernie that needed it at that time, and I

know —

THE COURT: And you know you had a wife and children at that time.

25

DEFENDANT WOJTOWICZ: I know. I took all that into consideration. I thought about it a lot, but my love for him is more important than anything else in the whole world and saving his life is more important than anything else and that's why I did what I did. You can't condemn love, love is a gift from God, your Honor, and it's a precious thing and very few people have an opportunity in life to give that love to someone else. I've been fortunate, I had a good mother, a good wife in Carmen and a good wife in Ernest, and I've tried my best to help them all I can. The only reason I did not leave the bank when Mr. Morse asked me to and surrender, if I left Sal would have killed all of them. He told me he wouldn't go to jail and he knew that I could get him out of there. He put his trust and faith in me and I got them to save the hostages, just me, by staying there. If I walked out they would have been dead and they know this and it should have been stated in the report somewhere but it wasn't. That's all I have to say.

THE COURT: O.K. Mr. Boyd, do you have anything to say on behalf of the government in this case?

MR. BOYD: There are a great number of human lives involved being held hostage. We are dealing with a most serious crime. I think the government's

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that was made at the time. The fact that your Honor well knows, the pre-sentence report, but certainly this is not an event that we can treat lightly in any way. The people of this district, the people that we represent require that justice be done.

do you have anything to add to your report?

MR. MYERSON: Nothing.

THE COURT: Mr. Landsman, do you have anything to say?

MR. LANDSMAN: I think the defendant has spoken for himself quite eloquently.

THE COURT: O.K.

Will you please stand now, Mr. Wojtowicz.

Mr. Wojtowicz, on your plea of guilty to Count

Two of the indictment contained in File No. 72-CR-1056,

you, John Stanley Wojtowicz, are committed to the

custody of the Attorney General of the United States

or his duly authorized representative, who shall

designate a place of confinement for a term of 20 years.

MR. BOYD: In consideration of the sentence just imposed the government would move to dismiss Counts One, Three and Four of the indictment, 72-CR-1056, against John Stanley Wojtowicz.

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THE COURT: 1, 3 and 4 are dismissed. All right, Mr. Marshal.

(Whereupon, Court stood in recess for the day in this matter.)

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IN CITERAS OFFICE U. S. DISTRIC I COURT ED. N.Y. UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

AUG 1 5 1973

FILED

TIME AM P.M.

UNITED STATES OF AMERICA.

JOHN WOLLOWICZ

MOTION FOR REDUCTION OF SENTENCE

Defendant

72 Cr 1056

ISIRS

PLEASE TAKE NOTICE that the undersigned will move this Court at a terms for Criminal Motions, to be held before the Homoroble Visions J. Terevia, Judge of the United States District If Court for the Elistern District of New York, in the United States Courthnuse, 22 Cadman Paga East, Brooklyn, New York, at a if time and slace to be designated by Judge Anthony J. Travia, for a reduction at centence worm was imposed on April 23, 1973, and for the such other and such as relief which to this Court may deem just and 6 proper oursmart of Rule (5 of the Rules of Criminal Procedure)

Dated: B more New York

Yours, etc.

MARK A. LANDSMAN Altorney for Defendant John Woltowicz 66 Court Street Brooklyn, New York 11201

TO: HON, ROBER & MORSE UNITED S. ATES AFTORNEY FASTERN DISTAR TOF NEW YORK 22 CADMAN PLAZA FAST BROOKLAN, NEW YORK

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK UNITED STATES OF AMERICA. 72 CR 1056 -against-AFFIDAVIT JOHN WOJTOWICZ. Defendant STATE OF NEW YORK) COUNTY OF KINGS MARK A. LANDSMAN, being duly sworn, deposes and says: I am an attorney and counsellor at law and am duly admitted to the practice of law in this Court. I represent the defendant JOHN WOJTOWICZ. This affidatet is submitted in support of a motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure to reduce the sentence of this defendant. John Wort wicz and co-defendant Robert Westenberg were charged in a four count indictment filed on or about August 31, 1972. Count One can seed the defendants with a violation of Title 18 Section 2117 (bank addrery). Count Two charged the defendants with a violation of Title 18 Section 2007 d (man), robbery with use of dangerous weapon). Count faces enacyed the defendants with a violation of fitte 13 Sector 2113 e (taking of hostages during bank robbery). Count Four charged the defendants with entering into a

conspiracy to commit the crimes enumerated in Counts 1 through 3.

On February 16, 1973 the defendant Wojtowicz entered a plea of guilty to Count Two of the indictment with the understanding that at the time of sentence the remaining three counts would be dismissed by the Government.

On April 23, 1973 the defendant Wojtowicz was sentenced by the Homorabic Antomy J. Travia, United States District Judge, to a term of insucisomment of twenty years under Count Two of the aforementioned indictment. The Court, upon the United States.

Attorney's motion dismissed the remaining three counts at the time of sentence. This motion is submitted in the hope that the Court will re-consider the sentence imposed and reduce said sentence in the interest of justice.

John Wojsowicz was 27 years of age at the time of the commission of the crime and had no prior criminal record whatsoever.

On August 22, 1972 John Wojsowicz and one Sai Naturale attempted to commit a bank cobbery at a Crase Manuattan Bank Branch on Avenue P in Branklen. New Y re-

As a result of quick action by lax enforcement agencies therewere the ped in the same Larmer the course of the robbery and respond to the train of lost less in an attenual to cain their freedom. The characters are to be different cans hours during which Wojtowicz actually encount of the bank to emfer with law enforcement officials tack the free Chieries was Atteney, Robert A. Morse.

Wojtowicz indicated a windingness to surrender but was fearful that

his cohort who was still inside would kill or injure the hostages if he did so. The hostages have stated that they feared Naturale but Wojtowicz was, in effect, protecting them from harm,

When Wojsowicz, Naturale, and the hostages were driven to the airport, Naturale was killed and Wojtowicz surrendered immediately. The defendant admitted to homosexual activities and indeed, claimed to be married to a male wife in addition to a female wife with whom he had two children. Defendant claims that the male wife's need for noney for a "sex change operation" was the basic reason for committing the crime.

In addition at the time of sentence, the defendant was in poor physical condition having inflicted injuries upon himself just prior to sentence, and was in a nightly nervous state during which he made certain statements which may have inadvertently antagonized the Court.

WHERETORE. It is respectfully submitted that the Court re-consider the sentence imposed and either reduce the sentence or in the alternat, e fir his eligibility for paralle pursuant to Title 18

Section (208 (a-2), . .

Dated Brinslen, New York

Maria A. Candstan

Sween to before me tass.

N day of Ad. 18 . 1973

There - Fire. C.

PENN FUELD PRO

E.D.N.Y. Form 1

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.
RESPONDENT.

vs.

MR. JOHN S. WOJTOWICZ # 76456-158, PETITIONER.

U.S. OCT 2 19/5

TIME A.M.....

Case No.

(Clerk to supply)

Motion under 28 U.S.C. §2255 by Person in Federal Custody attacking Sentence

INSTRUCTIONS-READ CAREFULLY

To be considered by the District Court, the motion must be in writing (legibly handwritten or typewritten), signed by the person in custody and verified (notarized). Answers to each applicable question must be concise. If the space is too small for the answer to a particular question, finish it on the reverse side of the page or insert an additional blank page, making clear to which question the continued answer refers.

Every motion under \$2255 of Title 28, United States Code, must be sworn to under oath. A false statement of a material fact in it may be made the basis of prosecution and conviction for perjucy. Take care to make the answers true and correct.

If the motion is made in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information that will establish whether petitioner is unable to pay the fees and costs of the 2255 proceedings.

When the motion is completed, the original and two copies shall be mailed to the Clerk of the District Court for the Eastern District of New York.

- 1. Place of detention I. U.S. PHILTHIPIARY, LEMISHIRG, PA.
- 2. Name and location of court which, and name of judge who, imposed sentence

HON. ANTHONY J. TRAVIA, JUDGE

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3.	The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:			
	(a) Ind. Mo. 72 CR-1056. Sentenced under 18 U.S. C. 21/3(1)			
	(b)			
	(c)			
4.	The date upon which sentence was imposed and the terms of the sentence:			
	(a) April 23,1973. 20 year term, regular adult			
	(b)			
	(c)			
5.	Check whether a finding of guilty was made			
	(a) after a plea of guilty			
	(b) after a plea of not guilty			
	(c) after a plea of nolo contendere			
6.	If you were found guilty after a plea of not guilty, check whether that finding was made			
	by			
	(a) a jury			
	(b) a judge without a jury			
7.	Did you appeal from the judgment of conviction			
	or the imposition of sentence?			
8.	If you answered "yes" to (7), list			
	(a) the name of each court to which you appealed:			
	i			
	ii.			

- 9. State concisely all the grounds on which you base your allegations that the sentence which was imposed on you is invalid:
 - (a) Petitioner's Court-Appointed lawyer influenced him to Plead Guilty by stating that he would not receive a sentence of more than Ten (10) or fifteen (15) years. Petitioner is now serving twenty (20) years.
 - (b) See, Table of Contents NO.3 (Interlocutory Statement in support of Affiadvit.)

(c)

- 10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - which is not forfilled and appears to be an Out-of-Court

 Deal must be delt with by 2255 Evidentiary Hearing.

 U.S. V. VALERCIARO. F.2d , NO. 73-1767 (3rd Cir.,

 filed April 12,1974). See: Table of Contents NO. 2
 (Motion to Amend Sentence)
 - (b) See: Table of Contents NO. 3 (Interlocutory Statement in support of Affidavit to Amend Sentence.)

(c)

11. Have you previously filed petitions for habeas corpus, motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

12.	If you answered "yes" to (11), list with respect to each petition, motion or application				
	(a) the specific nature thereof				
	1. See altached page				
	ii.				
	iii.				
	(b) the name and location of the court in which each was filed:				
	1 U.S. District Court (M.O. Pa.) Scranton Pa.				
	li.				
	iii.				
	(c) the disposition thereof:				
	1 Motion, amended motion and reconsideration				
	· motion were all dismissed. Petitioner now				
	eseeks action in the court of appeals (3rd Cir.)				
	(d) the date of each such disposition:				
	· Motion (2255) August 6, 1975				
	· amended motion September 4, 1975				
	* motion for reconsideration September 12,1975				
	(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:				
	. See table of contents - Tag Mo 8(E) -				

. " .. "

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ANSWER TO DESTINE # 12 A

I filed the below :

- 1. Petition for Writ of Mabeas Corpus (for persons in Federal Custody) dated August 1,1975 WOJTOWICZ V.

 ARNOLD ,et al, Civil NO. 75-913
 - a. Amended Motion dated August 13,1975
 - b. Reconsideration Motion dated September 9,1975
 - c. Zerox Copy Motion dated Sept. 15,1975

All were filed in the U.S. District Court for the Middle District of Pennsylvania, Scranton, PA. 18501.

Petitioner is being held Illegally since the Warden here Arbitrarily denies Petitioner Institutional Policy Statements and Rules, that others enjoy because of the homosexual implications attached to his crime.

13.	Has any ground set forth in (9) been previously presented to this or any other federa court by way of petition for habeas corpus, motion under section 2255 of Title 23, United States Code, or any other petition, motion or application?			
14.	If you answered "yes" to (13), identify			
	(a) which grounds have been previously presented:			
	1			
	ii			
	iii.			
	(b) the proceedings in which each ground was raised:			
	i			
	ii.			
	iii. ¿			
15.	Were you represented by an attorney at any time during the course of			
	(a) your arraignment and plea? VCS			
	(b) your trial, if any?			
	(c) your sentencing? <u>Yes</u>			
	(d) your appeal, if any, from the judgment of conviction			
	or the imposition of sentence?			
	(e) preparation, presentation or consideration of any petitions, motions or application with respect to this conviction, which you filed?			
18	If you answered "ves" to one or more parts of (15) list			

(a) the name and address of each attorney who represented you:

٠.	. ()	0		
	1. Mr. Mark	A. Landsman	, 66 Court St., 5	3'klyn, M.1.	
	ii	· · · · · · · · · · · · · · · · · · ·			
	111.	*********************************	***************************************	********************	
	(b) the proceedings at which each such attorney represented you: 1. My arraignment and plea.				

	ii. 1919 Sc	utencing.		************	
	iii.	***************************************	-	BOTH OF THE WAS ARRESTED TO SHEET WITH AND THE WAS A SHEET WAS	
17.		forth the required	forma pauperis, have yo information (see instruction		
			0000		
		<u>-</u>	John & Word Signature of Movin	g Party	
: U	STATE OF PENNSYLY	SS ss			
	JOHN S. WOJTOWICZ		sing fact among an day cath		
has su		g motion and does s	eing first sworn under oath tate that the information t		
			John & Wig	towiez	
			Signature of Movin	ig Party	
SUBSC	CRIBED and SWORN	TO before me this			
	day of Oct	[18] [18] [18] [18] [18] [18] [18] [18]			
1	MB COO Notary Public	psy			
Му со	mmission expires Act	of Officer Authorized by of July 7, 1, 5, to admin-			
	(month) (d	(veer)			

FORMA PAUPERIS AFFIDAVIT (see instructions, page 1 of this form)

L. JOHN S. MOJTOWICZ, do hereby swear that I am a citizen of the U.S. of America; that because of my poverty I am unable to pay the costs of said suit or action; that I am unable to give security for the same; and that I believe I am entitled to the redress I seek in said suit or action. I have in my prison account \$ 17.56 .

Signature of Moving Party

STATE OF PENNSYLVANIA } union county } ss

to the best of his knowledge and belief.

JOHN S. WOJTOWICZ

_, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct

John & Withwice Signature of Moring Party

SUBSCRIBED and SWORN TO before me this

14 day of Oct, 7.5 (year)

MB Cooksey

Notary Public

My commission expires Parts Officer Authorized by

(day) (year) (month)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ASA YORK

UNITED STATES OF AMERICA.

- against -

JOIN S. WOJTOJICZ, DEFENDENT.

72 CR 1056

MOTICE TO AMEND SENTENCE

SIRS:

Please take notice, that upon the annexed AFFIDAVIT of GEORGE NEATH, duly sworn to this 60 day of October, 1975 and upon all the papers and proceedings heretofore and herein, the undersigned will move this Court before a Judge as will be assigned in the U.S. District Court for the Eastern DISTRICT of NEW YORK, 225 Cadman Flaza East, Borbugh of Brooklyn, City and State of N.Y., at a time and place to be fixed by the Court, for an ORDER, pursuant to Due Process and CONSTITUTIONAL Grounds, ALAGUNG THE SENTENCE imposed upon the Defendant, JOHN S. WOJTOWICZ, on April 23,1973 (HGN. A. TRAVIA) or for such other and further relief as to the Court may deem just and proper.

DATED: LEGISTURG, PEN.

OCTOBER (1975

YOURS, ETC.,

GEORGE HEAPI, PARA+COLLEGE P.O. 204 1,300 Lewissing, FA.

TO: EDWARD J. BOYD, U.S. ATTOM EY 225 CADEN: PLAZA EAST B'KLY!, N.Y. 11201

> CLERK OF U.S. DISTRICT COURT EASTERN DISTRICT OF REW YORK

UNITED STATES OF ASERICA,

A against -

JOHN S. WOJTOWICZ. DEFENDENT. 72 CR 1096

AFFIDAVIT

IN SUPPORT OF MOTION TO AMEND SENTENCE

STATE OF PENISYVANIA } SS:

CEORGE HEATH, being duly sworn, deposed and sayo:

That he is an inmate serving 8] years pursuent to a judgment relating to indictment NO. 73 CR 116 in the U.S. DISTRICT COURT for the Eastern District of N.y. (MGI. JACK B. WELKSTER)).

That the Defendant, JOHN S. WOJTOWICZ, is an extremely close friend of mine and has requested that I represent him as Para-Counsel in these proceedings as witnessed below, pursuant to JOHNSON v. AVERY, 393 U.S. 483, and; appearances in this action be likewise waived.

That this AFFIDAVIT is submitted in support of a MODICE TO AMEND SENTENCE, by a vacative of such and/or to Modify the Sentence imposed upon JOHN S. WOJTOWICZ, and a WRIT of Habeas Corpus (2255) in connection with same, based on CCI - STITUTIONAL Grounds under Due Process, Equal Protection of the Law and, A. hibits as attached to the end of this AFFIRAVIT which include - WOJTOWICZ v. LANDSMAN Doc. NO. 75 C 1477; WOJTOWICZ v. AST. GENERAL OF U.S. Doc. NO. 75-913 CIVIL; WOJTOWICZ v. Delacorte Press of N.Y., and Patrick MA.N., Author.

On February 16,1973 the Petitioner-Defendent entered a Plea of Guilty in violation of 18 U.S.C. 2113 (d) (Count two), with the understanding that he would not receive a sentence of more than Ten (10) or Fifteen (15) years of imprisonment and that at such designation, the remaining three (3) Counts merging from that same section ((A), (e), and Sec. 371.)

would be Dimmissed.

ON April 23,1973, MR. WOJTOWICZ was sentenced to serve twenty (20) years under Title 13, U.S.C. 4202, the three (3) remaining Counts were Dismissed.

()

JOHR S. WOJTOWICZ was arrested on August 23 rd, 1972 as a suspect to the alledged bank robbery of a Chase Manhatten Bank at AVE. P & East 3rd ST. in B'klyn, N.Y.. That same day, Wojtowicz was assigned a Court-Appointed Counsel, namely MR. MARK A. LANDSMAN, 66 Court ST., B'klyn, N.Y. He then entered a Plea of not Guilty and was taken to the Mens Federal Detention Headquarters formerly at 427 West ST. N.Y. City.

On or about September 1,1972 Petitioner's Attorney argued in Court that Wojtowicz should be sent to theFederal Correctional Facility at Springfield, MO. where he could be given 90 days of Mental Observation (Title 18 U.S.C. - 4244). With winning objections from the Assistant J.S. Attorney, MR. Wojtowicz was sent about one week later to KINGS COLUTY Hospital, B'klyn, N.Y., where he stayed for approximately 3 weeks.

Petitioner told his Attorney in a letter dated 11/30/72 that he saw only one (1) argumentative Psychiatrist for about twenty minutes during that stay. He was found competent to stand trial. Ironically, the Petitioner's crime is based in part on the FACT that he did force the F.B.I. to Free his male-wife (Liz Eden-formerly NR. Enest AROX) from the same Niaga County Mospital. Hence, K.C. Mospital should have been considered bias by the Court for such an evaluation.

1. Within three weeks of Wojtowicz's agreement to enter Plea Bargaining, he and members of his family were informed that he would receive NOT more than a Ten (10) or Fifteen (15) year primon term that affords PAMOLS at one third of

that sentence. This FACT may have been heavily relied upon in his Lawyer's Motion for a SETTHOE Reduction filed in this Court on August15.1973, where he states, in part:

".... IN addition at the time of sentence, the Defendant was in poor physical condition having inflicted injuries upon himself just prior to sentence, and was in a highly nervous state during which he made certain <u>fitatements</u> which may have <u>inadvertently entermixed</u> the <u>Court</u>. "

()

Your Deponent submits that if Wejtowicz's Attorney felt that out-burts in the Court was a "proximate cause" in denying a lesser sentence, it is an efficient cause, one that naturally and necessarily sets the other causes in notion and without which the observed effect would not have followed and is a <u>Submitmital</u> Factor althouth not necessarily the sole factor, in bringing about an Injury.

QN Pebruary 16,1973 the Court accepted Wojtowicz's Plea of Guilty after he claimed that NO Promises, force or violence is attributed to his Plea.

The TYPE of deal or understanding MR. Jojtowicz had at the time of his Plea is an all to Unfortunate occurrence which is recognized by the Court - PARADISO v. U.S., 482 F.2d 409 (3rd Cir. 1973). IN MALTERS v. MARRIS, 460 F.2d 988 (4th Cir., 1972) and CULBREATS v. UNRDER, 446 F.2d (1972), the Court stated:

"Examination of the defendant alone will not always bring out into the open promises that has induced his guity plea. It is well known that a defendant will sometimes deay the existence of a bargain that has in fact occurred, e.g. WRITE v. Ogffney. 435 F.2d 252; out of fear that a truthful response would jeopardise the Bargain. In U.S. v.VALENCIATO, NO.73-1767 (3rd Cir., filed April 12. 1974) THERE THE Petitioner alleged a Lawyer Deal to Concurrency and the Court stated: "... Out-of-Court deal, east be dealt with 2255 evidentiary hearing."

Your Deponent submits that the Promise allegedly made to Petitioner raises ethical questions that are conceivably of a serious nature, and has to be delt with accordingly.

Your Deponent respectfully urges the Court to Vacate and/or Modify the seatence herein to contain a Reduction in Sentence that would best conform to the Minimum term as stipulated in the Original sentence Promise.

Wherefore, it is respectfully urged that the Court, in light of the above Facts, reconsider the Defendant's sentence and reduce it, or afford such other and further relief as to the Court may deem just and proper.

RESPECTFULLY SUBMITTED.

Home Heath

John & Wiftowicz

SWORN TO BEFORE AE

THIS 674 DAY OF OCTOBER, 1975

AM Ross Street - Estilative to Rest of July 1, 1502 to seminal tales cette (to book took)

UNITED STATES DISTRICT COURT
EASTER! DISTRICT OF WEW YORK

UNITED STATES OF AMERICA.
RESPONDENTS.

72 CR 1056

- against -

AFFIDAVIT L: SIPPORT OF HOTIGE TO ALMED

JOHN S. WOJTOWICZ, PETITIONER

STATE OF NEW YORK } SS:

I, MRS. THERESA WOJTOWICZ, THE MOTHER of the above named Petitioner, being duly sworn, deposes and says:

That in Support of a <u>MOTIO!</u> TO <u>AURID THE SEITHIGE</u> imposed upon JOHN S. WOJTOWICZ, Petitioner, I submit the following Facts as listed below and state that without the assistance of MR. GEORGE HEATH, his sub-professional Legal Advisor, the arrangements of this AFFIDAVIT would not have materialized.

That on or about the 30 th day of JANUARY, 1973, I the undersigned, plus others of our immediate family did urge the Petitioner, JOHN S. WOJTOWICZ, to enter a PLEA OF GUILTY in relation to the crime for which he is now serving time. Our encouragement stems from a conversation with his Former Court Appointed Attorney, NR. MARK A. LANDS AND, 66 Court ST. B'klyn, N.Y., who informed me that if JOHN S. WOJTOWICZ did enter a plea of guilty, he would not receive more than a ten (10) or fifteen (15) Year prison term, which would in turn mean that he could make PAROLE by meeting parole specifications.

I believe and understand that my encouragement was a Primary Factor in inducing JOHL S. WOJTOWICZ'S decision of entering that PLEA and hope this COURT may take this into account when determining the derits for a SEMTRICE MODIFI-cation. Of course and notwithstanding our close relationship

to Petitioner, I believe that he should serve time for the offense of which he committed but in accord with the Time he expected to receive as was mentioned by his Attorney.

()

JOHN S. WOJTOWICZ was an out-patient at ST. VINCENT'S HOSPITAL when he committed the crime for which he is serving time. I feel it necessary to mention this because:

(A) He was under PSYCHIATRIC Treatment for Attempted SJICIDE - which was the result of his homosexual activity that he incurred during three (3) years of military service, which included a year in the REPUBLIC OF SOUTH VIETIAM.

(B) His crime was the result of his desire to SAVE the LIFE of his LOVER, LIZ EDEN (formerly MR. ERREST ARGN), by trying to finance him with enough funds for a SEX-CHANGE Operation. LIZ EDEN was also under Psychiatric Treatment and had been confined at the Psychiatric Ward of KINGS COUNTY Hospital, B'klyn, N.Y., for Attempted SJICIDE since JOHN S. WOJTOWICZ could not previously obtain the funds for a SEX-CHANGE Operation.

With this type of situation at hand, I am least not last, to suggest WOJTOWICZ'S need for rehabilitative assistance affording him a good conduct achievement goal that would mean liberty as an end result. Had his lawyer, MR. LANDSHAN, suggested that through Plea Bargaining a sentence carrying its near maximum term might be imposed as was in thecase at bar, I would have never influenced him to enter a Guilty Plea. Since in FACT that was not the case, I strongly urge that a Modification of Sentence be had in this case. I understand that at the time of sentencing, Other COU.TS in the indictment were Dismissed, but that this came about, not because he was a FIRST OFFENDER as I had Originally thought. but because it was a PYRAMID-TYPE Indictment based on one event whereas those three (3) additional CCUNTS would have been dismissed after a trial or Run Concurrently at his sentencing, if convicted.

() (PAGE 3) Wherefore, I the undersigned pray that in light of the above Facts this COURT may grant a Sentence Modification in this case, or afford any relief this COU.T finds proper and just. MESPICIFILLY SIGNIFICATION OF PETITIONER SWORN TO BEFORE ME October THIS 2 DAY OF SCHOOL 1975. MORRIS LEVINE
Rotary Public, State of New York
No. 24 2331579

Qualified in Kenus County

Commission Expues March 30, 1999 GEORGE HEATH, PARA-COUNSEL P.O. BOX 1,000 LEWISBURG, PA. 17837

O'UNITED STATES DESTRICT OF REW YORK

UNITED STATES OF AMERICA.

RESPONDENTS,

72 OR 1056

- against -

JOIN S. WOJ TOWICZ.

AFFIDAVIT IN SUPPORT OF MOTION TO AMEND

PETITIONER. .

STATE OF NEW YORK KINGS COUNTY

SSı

I. MRS. CARMEN. ANN WOJTOJICZ, THE WIFE of the above named Petitioner, being duly sworm, deposes and says :

That in Support of a <u>LOTION</u> TO ALBED THE SELECT OF imposed upon JON S. WOJTOWICZ, Petitioner, I submit the following facts as listed below and state that without the assistance of JEROGE HEATH, his sub-professional Legal Advisor, the arrangements of this AFFIDAVIT would not have materialize.

That on or about the 30 th day of JANUARY, 1973, I the undersigned, plus others of our immediate family did arge the PEtitioner, JOHN S. WOJTOWICZ, to enter a PLEA OF GUILTY in relation to the crime for which he is now serving time.

Our encouragement stems from a conversation with his Former COJRT Appointed Attorney, MR. MARK A. LANDSMAN, 66 Court ST.

B'KLYN, N.Y., who informed me that if JOHN S. WOJTOWICZ did enter a plea of guilty, he would not receive more than a ten (10) or fifteen (15) Year prison term which would in turn mean that he could make Parole by meeting parole specification

I believe and understand that my encouragement was a Primary factor in inducing JOHN S. WOJTOWICZ'S decision of entering that plea and nope this COURT may take this into account when determing the merita for a sentence modification. Of course and not withstanding our close relationship to Petitioner, I believe that he should serve time for the offence of which he committed but in accord with time he expected to receive as was mentioned by his attorney.

JOHN S. WOJTOWICZ was an out-patient at ST. VINCENT'S
HOSPITAL when he committed the crime for which he is sering time. I feel it necessary to mention this because (a)
He was under PSYCHIATRIC Treatment for Attempted Suicide—
which was the result of his homosexual activity that he
incurred during three years of military, which included a
year in the REHUBLIC OF SOUTH VIETNAM, (b.) His crime was
the result of his desire to Save the LIFE of his LOVER,
LIZ EDIN (formerly MR. ERVEST ARGN), by trying to finance
him with enough funds for a SEX-CHANGE Operation. Liz EDEN
was also under Psychiatric treatment and had been confined
at the Psychiatric Ward of Kings County Mospital, B'xlym,
N.Y., for attempted SJICIDE since JOHN S. WOJTOWICZ could
not obtain the funds for a Sex-Change Operation.

With this type of situation at hand, I am least not last, to suggest WOJTOWICZ'S need for rehabilitative assistance affording him a good conduct achievment goal that would mean liberty as an end result. Had his lawyer, MR.LANDSMAN suggested that through plea bargaining a sentence carrying its near maxium term night be imposed as was in the case at bar, I would have never influenced him to enter a guilty plea. Since in fact that was not the case, I strongly urge that a Modification of Sentence be had in this case. I understand that at the time of sentencing, other counts in the indictment were dismissed, but that this came about, not because he was a FIRST Offender as I had Originally thought, but because it was a Pyramid-Type indictment based on one event where as those three additional COUNTS would have been dismissed after a trial or run concurrently at his sentence, if convicted.

Wherefore, I the undersigned pray that in light of the above facts this COURT may grant a Sentence Modification in this case, or afford any relief this COURT flads proper

and just.

RESPECTFULLY SUBMITTED.

(1)

Mes Carner Cars Moreston MRS. CAR. A.M. JOJ TO ATCZ. YEAR WIFE OF PATITIONER

SWORN TO BEFORE HE THIS

DAY OF SEPTEMBER, 1975.

WILLIAM J. GRAHAM
Notice Public - State of view York
No. 52-562225
Outflied in Nutrick Lounts
Certificate Filed in Navious Country
Commission Expers March 30, 1926

GEORGE HEATH, PARA-GOULSEL P.O. BOX 1,000 LEWISBURG, PA. 17837

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Color

UNITED STATES OF AMERICA, RESPONDENTS.

- against -

JOHN S. WOJTOWICZ, PETITIO ER. 1

72 CR 1056

AFFIDAVIT IN SUPPORT OF MORIGI TO ALMID SENTENCE

U. S. DISTRICT COURT E.D. H.Y.

75-C-92-1

* NOV 5 - 1975 *

STATE OF NEW YORK } SS:

I, MS. LIZ EDEN (formerly MR. ERGEST ARO;). Transsexual and former LOVER of the above named PETITIQUER, being duly swom, deposes and says:

That in SUPPORT of a MOTIO: TO AND THE SENTENCE imposed upon JOHN S. WOJFO-ICZ, Petitioner, I submit the following FACTS as listed below and state that without the assistance of WR. GEORGE HEATH, his sub-professional Legal Advisor, the arrangements of this AFFIDAVIT would not have materialized.

That on or about the 30 th day of JANJARY, 1973, I the undresigned, plus others of our immediate family did urge the Petitioner, JOHN S. MOJTOMICZ, to enter a PLEA OF OJILTY in relation to the crime for which he is now serving time. Our encouagement stems from a conversation with his Former Court Appointed Attorney, MR. MARK A. LA.DS.AI.

66 Court ST., B'Rlyn, N.Y., who informed me that if John S. MOJTOMICZ did enter a plea of guilty, he would not receive more than a Ten (10) or fifteen (15) Year prison term, which would in turn mean he could make PAROLE by meeting parole specifications.

I believe and understand that my encouragement was a PRIMARY FACTOR in inducing JOHN S. WOJTOWICZ'S decision of entering that PLEA and I hope this COURT may take this into

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(1

account when determining the MERITS for a SECTINCE
MODIFICATION. Of course and notwithstanding our close
relationship to Petitioner. I believe that he should serve
time for the offense of which he committed but in accord
with the TIME he expected to receive as was mentioned by
his Attorney.

JOHN S. WOJTOWICZ was an out-patient at ST. VINCENT'S HOSPITAL when he committed the crime for which he is serving time. I feel it necessary to mention this because:

- (A.) HE was under PSYCHIATRIC Treatment for Attempted SUICIDE which was the result of his homosexual activity that he incurred during three (3) years of Wilitary Dervice, which included a year in the REPUBLIC OF SOUTH VIETIAM.
- (B.) His crime was the result of his desire to SAVE
 MY LIFE by trying to finance me with enough funds for a
 SEX-CHANGE Operation. I was also under Psychiatric Treatment
 and had been confined at the Psychiatric Ward of KENGS
 COUNTY HOSPITAL, B'klyn, N.Y., for Attempted SJICIDE since
 JOHN S. WOJTOWICZ could not previously obtain the funds
 for my SEX-CHANGE Operation.

With this type of situation at hand, I am least not last, to suggest WOJTOWICZ'S need for Rehabilitative assistance affording him a good conduct achievement goal that would mean liberty as an end result. Had his lawyer, UR.

MARK A. LANDSJAN, sunggested that through PLEA BARGAIAING a sentence carrying its near maximum term might be imposed aswas in the case at bar, I would have never influenced him

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additional COURTS would have been Dismissed after a TRIAL or RUN Concurrently at his sentencing, if convicted.

Wherefore, I the undersigned pray that in light of the above FACTS this COURT may grant a SENTERCE MODIFICATIO; in this case, or afford any relief this COURT finds proper and just.

RESPECTFULLY SUBSTITUED,

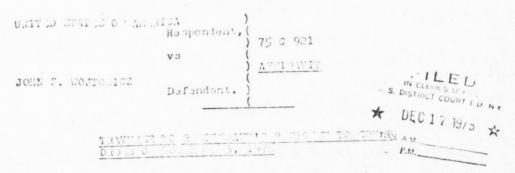
MS. DLIZ LDS. (formerly - MR. ERIEST AROL)

SWORN TO BEFORE ME,

THIS 17 DAY OF SOUTH A. 1975

Colary Public State of New York No. 41-1615-65 Govern Court Cert. Filed in Levy York Jerm Expires March 30, 22/

GEORGE HEATH, PARA-COUNSEL P.O. BOX 1,000 LEWISBURG, PA. 17837



AND NOW, comes George Heath, counsel to the defendant John S. Wojtowicz, being duly sworn deposes and says:

- 1. This Affidavit is submitted in raply to the Affidavit of Garvin W. Scotti, Assistant W. S. Attorney opposing the Defendant's motion to amend sentence, which your Affiant received Friday evening, Decamber 5, a delay because no postage was paid on their mailing. See, enclosures to Court copy.
- 2. The Respondent's Affidevit is inaccurate concerning the assumption that the Defendent, John 3. We jtowicz says he is entitled to a reduction or vacation of sentence. He does, however, contend that he is entitled to an evidentiary hearing to determine whether the alleged statement by his former attorney, Mr. Mark A. Landman, bore enough credibility to determine the Court's view for such consideration in light of UNITED 3 MARKS VALUEDIANO, _____ F.2d _____, 521 231; No. 73-1767 (3rd Cir. filed April 12, 197h.
- 2. The Defendant's application under 28 U.S.T., § 2255 for a writ of habs a corpus is a codification for an Affidavit therein as defendant 'does say' that his former lawyer influenced him to plead guilty in lieu of the 10 or 15 year sentence ordeal.
- 3. On page 13 of the centencing transcript (lines 22-25) and lh, (line 1), the Defendent's so-called sale wife, says he wasn't going to stund around 7 or 8 years--(if defendant)--go(es) to trial and be found guilty on everything. And, although his former attorney tried to prove the defendant mentally ill and that this illness was the cause or his relationship with this homos word. Landacan arranged a context wisht for the Defend at with the homos word, Indiana, so by

would plead guilty and receive less time. It should be noted that the 7 or 8 years aforementioned, locically core are perel, consideration on a term of 20 and 25 years.

4. The montancing record in this case is full of conflict and confusion between the Defendance and council. The Defendant has two civil suits pending against his former attorney and therefore the attached Attorney's (Landsman) Affidevit must be dispeted with a grain of salt.

5. Respondent's are correct in saying that banks insured by the FDIC could be prosecuted in federal court. However, the word 'could' is dependent on underlying circumstances and not just because that bank is insured.

WHEREFORE: it is respectfully urged that the Court, in light of the Defendant's original motion and all other such evidence in support thereof, afford him the relief prayed for, or grant such other and further relief as the Court deems proper and just.

Respectfully submitted,

01000 Tilk, Alliant and counsel for defendant P. 0. Box 1000

P. 0. Box 1000 Lawisburg, Pa., 17837

5007 TO BENORY IT THIS 11th DAY OF DECEMBER, 1975 ...

UNITED SERVICES PROCESS OF FISH

AFFIRMAMCE

I, George Heath, do hereby aftern that I was unable to obtain the service of a notary public at the time at which I required them.

I do further aftern that the contents of the annexes "Defendant's Response" to be true except those matter trown though information and taked and these I believe to the best of my fineward.

U.S DELIBERT COLUMN NY

WHITED STATES DISTRICT COURTS
EASTERN DISTRICT OF NEW YORK

IME : "

JOHN STAMLLY WOSTOLICZ,

Reliberer 1

- against-

THE UNITED STRITES OF AMERICA,

Respondent

75 C 4 XI MOTION FOR RECONSIDERATION

Petitioner Pro Se, John S. Wojtowicz, comes now moving this Honorable Court to reconsider its Order of January 15, 1976 pursuant to Rule 59, F.R.C.P., and in support of this request, respectfully states:

1. The Court is in error in error in alledging that petitioner's counsel did not misinform him that an agreement had been reached wherebe he would receive a lesser sentence. Any time a time estimate by counsel, of determined crisis falls within a given area not to surpass its own duration. The estimate itself is a dependent clause and not what the Court assumes as a predicted expectation.

forth the agreement reached by politicaners court-appointed afterney for a lesser sentence is not in this instance the sole factor in bringing forth the plea of guilty; neither should political an indigent, be concerned as to each porty involved in the agreement so long as he had faith in his lawyer that this type of deal—dependent on non-disclosure by political at time of plea and sentence—would be carried out. However, as the sentencing minutes revent petitioner was not certain that his lawyer was

on his side any more:

Page & (lines E-11)

THE DEFENDANT: ... I haven't been defended properle

THE COURT: If you haven't then you ought to withdraw your plan.

Petitioner's consideration of a plea withdrawal depended on the court appointing him a new lawyer; and after petilioner presented 9 pages of arguments (sentencing transcript, page E-19) showing why new counsel should be appointed. the court chastised him on page 18, saying "How many times do you think I'm going over that; then you'll want another one and another one. The Court just doesn't give you lawyers to meet with your approval ... " Sympatheolically. petitioner's afterney Mr. Landsman states (page 21) that since the defendant (Wiglawicz) doesn't want to talk to me about any thing any more, perhaps if would be in his best interest to have another lawyer. Give him an appertunity to consult with another lawyer."

Since the only obstacle now contrenting the court was how it should effectively see if petitioner and his attorney could reunite. The court promptly turned to Landsman on page 22 saying "He's not asked to withdraw his plea; he said he doesn't know. He wants time to think about it. I do think that any delay would certainly be a delay occasioned by his own actions." That of course would have Landsman think twice about his last statement of withdrawing from the case giving petitioner time to consult with another lawyer. And the court immeditely asked Landsman the timely question "You want to be removed as a lawyer here?"

many or commence to many war war color

Landsman replied "Frankly, I would do anything the Court requests me to do . . . The systematic question by the court was now thrown at petilioner in a matter of fact way " You don't want to talk to Mr. Landsman any more?" Al that intensified moment his mother cries out "Think about it John." "Liho are you anyway?" the court askal. His mather speaks for him saying "He doesn't know right this minute, I think he's mixed up." With that, the court move. in and says " Mr. L'affeniez, you want me to discharge Mr. Landsman?" And on page 23 in answer to the question. Weitewicz said "Me. The court reassuringly asked again "You want to talk to him again?" He replies "See your Honor"

It really does not appear that petitioner wanted to talk to his as lawyer as the next two questions by the court reveal:

THE COURT: You want me to hold up the sentencing until you talk to him again?

DEFENDANT MOSTOMICS: MG.

THE COURT: you want to be sentenced today?

DEFENDANT WOJTOWICZ: Yes your

In Part, out of the next 77 questions the court asked petitioner, 51 were leading questions and answered accordingly. Approximately, of all the remaining court statements to petitioner - border line from being questions, or not - were followed with the yes your Honor routine.

3. Briefly recapping positioners 9 pages of arguments against his afterney, we find that its based on the following information:

(a) Pelitioner states that he was not properly defended. (Page & lines)

(b) Petitioner's altorney would not submit various motions revelant to his defense (Page 12 and 13)

(c) Petitioner's allorney accepted a large sum of money from him in violation of Title 18 U.S.C. 3006A. (f); a portion of which would be returned if petitioner only plead guilty. (Page 13 line 14-18)

(d) Petitioner was not satisfied with his lawyer and says to the court."... and for you to accept my guilty plea I would have had to say yes, so I would not lose Ernie I had to say yes even though I didn't agree with it. (Page 15 line 10-14)

Il is these very circumstances and all other such documents submitted to the Court that should entitle politioner to an evidentiary hearing to determine it it was at all possible for petitioner to have denied in open court The premise that added to the inducement el his guilty plan. The Court is aware that some times a defendant will deary the existence of a bargain out of fear that a truthful respons would jeopardise the bargain. In light of that, the Court would not be obliged to construit petitioner's ajaining "motion to amend sentence" as a motion pursuant to Rule 35 since petitioner is not allacking the conviction, but rather the sentence. Moreover, the 120 day time limitation under Rule 35, F.R.C.P., does not preclude a district court from directly reducing or otherwise reconsidering a legally

imposed suntence, see: George Health V. United States, Docket Mo. 75-8265 (2d Cir. December 12, 1975).

WHEREFORE, it is respectfully arged that the Court, in light of the above facts, reconsider petitioner's motion to amend sentence; it together as one motion pursuant to the 2255, attacking the sentence, afterd an evidentiary hearing or whatever relief it leds proper and just in effecting a sentence reduction.

John S. Wistowicz Rolling

Sworn to and mailed by and before me this 26th day

of January 1976 W. Castress

Officer, U.S. Pen. Lewisburg, Pa.

· Parole Circum Arthur and by
Act of John (16 100 10041)

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1 750-92 Mr. John & WOTTOWICZ 76456-155 6.0. Det 1000 Lewisburg, Sa. 17837 Inez. 1/27/76 To: Him. Former C. Platt Re: John S. Wifting U.S.D. J. Vs. U.S.A. U.S. District Cout (E.D. of N.Y.) 75-C-PALED 225 Endmen Player Fast U. S. DISTRICT CO. R. LD. D'salyn N.Y. 11201 * FEB 17 1976 Dear Thr. mr. Plate if an writing to you, so you may would the below facts in addition to the Duranderston meter that if is, to Figure yesterday, if find that After you reven these facts you will be letter able to understand what took place on the day the of was Sitered by Tron. Judge Time. On that day 4/23/73 award 3 A.M. if swalling approximatily 100 pulls consisting of limitals + discours, if planned to toll myself leave if had not heard from my male, wife - Ernest and and feit he had left me for good & of didn't afrect at first, so it legan to duply cut my wrists & forearms with ragor blades, of set in the tidt + lit to Plant drain out until of found out, The next thing it remember was lying in a port of blind outside of my cell, or hearing arguments over what should be done with me, if was finally rusked to St. Vincente Thospital under armed grave. and stitched up. I was returned to the February.

There of betition at West St. amund 90.17. where,
office arguments ammened over whether of shall go

to be sectioned in my present prepried + mental
conditions. The U.S. marshal & personaled the
officials to let me go with them to the Court.

When if appeared in the Court have in chairs
all would with blood, bindages + slipping int
out of consciusioners, my finale wife + metaprotected in an attempt to have the best rong
postylored but to me avail. The Judge ordered
my menualis unwell + preceded with what if
feel was an illegal senting preceded lieure
of my detained + poor physical + mental

debut unearlier sen much of what hoppind that day except for some fruit they have for the formal a record of high finding out. If do unumber my arguery for a new langue of not to be sentimed a new of some hard, my stokey my love of attempt to some Errort and light of what argument with the fully land that the day unaward of the formal of the court minutes of 4/23/73 on 12/5/7 from the U.S. District account,

let surprise me ein new to read som of the tings that hopping that day, if I signe being Bearle for a french of time + then being that what hopping the wife, come, said for 3.4 days later if was high as a lete tramilion with my ments. She had never seen me

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Page 3

act like that lefore, if this also necessary to inform the last that of never smited or topen any said of drugs previously to get high. attorney, Mr. Marie A. Landeman, would not face moved immediately for a postperioret of the Sentencing because of my condition as disculate above. The limit minutes dianly show that wie my nite much any outlierte cit all in my It is ever were unillimable to me that later in Mr. Lundimer in his motion for a Sentene Reduction on 8/5/73 would in fact lung up these very print, + if quete: "... In addition at the time of sentince, the defendant (m. 7. stower) was in Pour physical condition lawing inflicted injuite upon himself just printer sentina, + was in a highly nevers thate during which he made certain Ititements where may have it reductivity antaging in to Court. " Tinguite. There was also emphasized in the affiliant in Support of nature to amend section by me inge Heater or page 3 of the same which accompanied the original 2255 in the case at war. of bejon & frey the alone will aid the Cuit 1 bely in its delimination of my humberitie thatin. Swom to-lefu me x Regardfully Yours, madel by The this John de le flowing 30 of January 1976

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MARTINE DISTRICT OF HER YORK

UMITED STATES OF AMERICA,

-against-

JOHN S. WOJTHICE,

Defendant.

Civ. 75-0-921

U. S. DISTRICT COURT E.D. NY

MAY 1 2 1976

MINORALDUM IN SUPPORT OF PLINTING FOR SENTING PODIFICATION AND INJUNCTIVE RANDER

Statement

This memorandum is submitted in support a petition for the recipioner-defendant, JOHN S. MOJICHICZ, for writ pursuant to the Federal Rules of Criminal Procedure, dated April 26, 1976, to modify sentence and grant injunctive relief -- a transfer from Lewisbur; Penitentiary -- pending appeal. Fetitioner's appeal and other such papers attached at the end of this memorandum presents a statement of facts.

Surmary of Argument

Petitioner makes the following contentions:

- (1) that Rule 35 of the Federal Rules of Griminal Procedure, 18 U.S.C., is not an inflexible barrier to the power of the district court to correct an improper, but legal centence; and
- (2) that counsel's inelfectiveners was such as to permit the court to impose a legal but improper sentence.

Argument

I. PLTITYOUR MAE DIFFED DUI PROCESS OF IME BY THE GENERAL TO A THEF
OF LEPTE THE THEOR, THOUR LEADING, WAS BASED UPON CIRCU STANCES SO
METRORISMARY AS TO DEPUTY. PETITIONS OF DUE PROCESS OF LAW.

Patitioner contends that his former attornes, Mr. Mark A. Landsman, negotiated with Artists Entertainment Complex, Inc., so that a true life story of patitioner's crime would be made into a movie. The resulting popularity that patitioner received is causing his sentence to be served with undue mental suffering and physical abuse.

he was threatened by Marner Brothers who told him that copies of the hostages' testimony already gathered and transcribed by Marner Brothers would be given for inclusion in Littlejohn's (Fetitioner) pre-sentencing report in return for the interview.* Landsman further says that "to be perfectly frank, I didn't want to get involved. How should I know what it takes to pay off a criminal for his story?" ** Petitioner at this point did not give in to Marner Brothers threats but argues that I sman should have conducted the necessary interviews relative to its possible effect on his sentence. This would have prevented such an illrational threat by Warner Brothers and certinly not motivate the need to deal with them.

I'r. Landsman was considered competent by the court and acting in the patitioner's best interest. Patitioner was therefore sentenced under a mistake of fact which is affecting the duration of his sentence for the

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^{*} See: attached newspaper report, section underlined in red. * The Village Voice reuspaper of Lepte der 29, 1975.

reason that it was a significant factor considered by the court at the time of sentencing, to wit: petitioner argued at sentencing that Landsman did not properly represent him. Petitioner now avers that Landsman's conduct can only be rejarded as in reckless disregard for his safety because he intentionally failed to do an act which it was his duty to him to do; knowing or having sufficient reason to know of facts which would lead a reasonable man to appreciate that his conduct not only created an unreasonable risk of serious harm to the petitioner but also involved a high degree of probability that substantial harm would result to him. This recklessness on "r. Lendsman's part is a symonym for wilfullness or wentonness. That is, "malicious interference" that does not mean malice in the sense of ill will but merely purposeful interference with Varner Erothers without justification. In this case it has effectively worked against, not only the possible term of the sentence, but the connection between a term adequate to meet his special needs, i.e., proper rehabilitation; proper protection from other inmates in lieu of the movie Dog Day Afternoon glamorizing him as a queer who cooperated with the Government; and the scar that has developed against him by prison officials who will formulate the basis for his parole eligibility. These factors are extraordinary. So much so as to deprive petitioner of due process of the law, and, a detriment that the sentencing judge did not know would affect the sentence in terms of reasonable empectations of petitionar and the court.

There is law to the effect that a petitioner may move for reconsideration of his sentence where the sentence was founded upon error. In Putt v. United States, 363 1.2d 369 (1966), a petitioner appealed from a court order denying relief on a motion pursuant to 28 U.S.C. 2255. There petitioner complained that his sentence was void because the presentence

report contained false information. It was held that where the false information had no effect on the sentence, the mere presence of the information would not constitute a ground for relief. The court seemed to indicate that where the false information did have an effect on the sentence, there might be basis for relief pursuant to 18 U.S.J. 2255.

In Parners v. United States, 368 F.2d 327 (1966), cert. denied 386 U.S. 919 (1967), the defendant made a motion pursuant to 28 U.S.C. 2255 to vacate and correct his sentence on the ground that it had been based upon false information on the presentence report. The sentencing judge had denied the motion and expressly found that the assertions challenged as false had not affected the sentence. Arguably, Landsman's ineffectiveness, plus his unwarranted negotiations with Warner Prothers proved misleading because the sentencing judge may have been lead to believe at the time of sentence that the actions of ir. Landsman would not be determinable with respect to the harsh conditions the petitioner is under, or how it will affect his chances for parole. Petitioner takes the position that Landsman's acts were misleading in the same sense that the presentencing reports referred to above could have been misleading. Assuming those presentencing reports have been found misleading, the court may have gone the other way. Likewise, the sentencing judge may have decided on a different term of imprisonment had he known more about the impact of Landoman's dealings with farner Frothers involving petitioner's criminal case, and moreso his ineffectiveness.

In United States v. Tunt, 413 F.2d 903 (4th Jir. 1969), the court noted that where defendants were sentenced to less than the maximum term of imprisonment, they would have no remedy pursuant to 20 U.J.J. 2255 "absent extraordinary circumstances." Id. at 984. Petitioner takes the position that the sentencing judge's lack of knowledge with respect to the

impact of Landaman's total actions is such an extraordinary circumstance.

THE CLASS OF WILL 35 OF THE RELEASE DESCRIPTION TO SELECT THE DESCRIPTION OF WILL 35 OF THE RELEASE PRODUCE 10 C.S.C. RULL 35 IN MOT AS I PUBLICATED TO THE PRODUCE OF THE DESCRIPTION OF SELECT AS I PRODUCE OUT TO CARLEST

Rule 35 empressly grantes power to a district court to correct an illegal sentence at any time, and authorizes the court to reduce a sentence or correct a sentence imposed in an illegal manner within 120 days after receipt by the court of the mandate of affirmance on appeal or within 120 days after disposition by the Supreme Court upholding the conviction.

The Supreme Jourt has indicated that the Federal Rules of Criminal Procedure should not be considered inflexible, and that a defendant may on occasion be excused from untimely action when he has demonstrated there were exceptional circumstances causing the delay. Fallen v. United States, 378 ".S. 139 (1964); Bodge v. Fenne't, 335 F.2d 657 (1st Sir. 1964); Irizarry v. United States, 58 F.2.S. 65 (D. Mass. 1973). In United States v. Rughes, 36 F.2.D. 25, 26 (S.D. F.M.)(1973), a proceeding pursuant to Rule 35 for a further reduction of centence, although ruling against the defendant, the court noted "the existence of circumstances over which the defendant had no control . . . is not in the present case. In the absence of such circumstances, the ... period prescribed in hule 35 will not be enlarged."

36 F.3.D. 25, 16.

Petitioner takes the position to the centrary notwithstanding; I'r. Landsman has filed a timely hule 35 motion for the potitioner but in a decitful manner so as to make the petitioner believe that it could have been properly considered by the court when in fact it lacked the essential

ingredients for such. Ir. Landsman him is contends in his Rule 35 motion submitted for the netitioner, that the sentence may have been improperly imposed if it was motivated by the petitioner's uncontrolled actions at sentencing. Yet, Mr. Landsman has failed to establish on record any of these abnormal actions by the petitioner, or that these actions were the result of an uncontrolled condition at the time of sentencing. Landsman has therefore established his own admission of ineffectiveness which, if such facts are true that Landsman claims, the sentence should be vacated for further consideration based on Landsman's ineffectiveness over which petitioner had no control and, constitutes no inflexible barrier to the power of the district court to correct an improper sentence.

CONCLUSION

For the foregoing reasons, the petition should be granted. Alternatively, it is prayed that the Court exercise its discretion to vacate or modify petitioner's sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure 18 U.S.C.

Dated: MEN YORK, MEN YORK May , 1976

Respectfully submitted,

GEORGE WEATH, Pere-counsel for Petitioner-Defendant

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New York, Jew York 10007

Sworn to before me this

7" deg of 'e; 1976

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

The Boys in the Bank ByRandy Wicker

John Wojtowicz-known in Manhattan's gay community as Littleiohn Basso-pleaded guilty to "armed bankrobbery" in February and returned to the U.S. District Court in Westbury, Long Island for sentencing by Judge Anthony Travia on Monday, April 23rd.

BACKGROUND

Since pleading, however, Littlejohn had become embroiled in a conflict with his attorney. Mark Landsman over Landsman's handling of his case. Littlejohn had written Landsman a letter April 1st dismissing him from the case and had written Judge Anthony Travia asking that a new-attorney be appointed to represent him. Travia had refused to do so.

On the Thursday preceding Monday's scheduled sentencing, Terry Wojtowicz, Littlejohn's mother, asked me to visit Littlejohn with her to convince him to try settling his differences with Landsman.

Littlejohn had refused to see Landsman twice when he visited the Federal Detention Center on West Street earlier that week, Littlejohn charged that Landsman had violated their oral agreement by refusing to give his mother the last \$500 due him out of the \$1500 Landsman had promised to return if Littlejohn peraded guilty and didn't put Landsman through the inconvenience of trying his case.

I'd taken Terry to see Littlejohn nearly every Friday during the winter months, had sat in on the legal conferences between Landsman and the Wojtowicz family and helped negotiate the agreement with Warner Brothers for the proposed film about the robbery. I'd heard Landsman promise the family a \$1500 refund in the event Littlejohn pleaded guilty.

Land man had insisted \$5,000 of the \$7,500 Littlejohn received from Warner Brothers be set uside in a "legal defense fund" which Landsman would administer. The fund was to be used for court expenses, psychiatric testimony and gathering evidence. The remainder if there was any—would be Landsman's fee for handling the cise. Littlejohn insisted Landsman give Friest Aron the remaining \$2,500 for a sex change operation.

Aron, who monopolized Littlejohn's visiting hours and only allowed Littlejohn's mother and myself to speak with Littlejohn when and if he chose to do so, strongly urged Littlejohn to plead guilty to the armed robbery charge and rish the 25-year maximum sentence. Littlejohn's mother urged him to plead insanity, stand trial and take his chances before a jury His wife wavered, first favoring a trial and then leaning slightly toward a guilty plea.

I hadn't seen Littlejohn since shortly after his February plea. He had been confined in a maximum security cell for several weeks, Someone called the FBL saying that "New York's gay groups were planning to march on the Detention Center and free" Littlejohn.

When the Warden asked Littlejohn about the reported gay group sponsored escape plot. Carmen says her husband "got mouthy" with the Warden, saying "What if they were? You couldn't stop them anyway." Littlejohn had been hept in solitary confinement ever since.

During the Thursday visit, Littlejohn detailed his complaints with Landsman to me and his mother and asked us to issue a press release to the news media on his behalf. We agreed to do so.

Littlejohn said Landsman was more interested in negotiating with Warner Brothers than in helping him, that Landsman had arranged an interview with the Warner Brothers script writers even though they refused to give him the additional \$3,000 fee he was demanding for it. Littlejohn refused to keep the interview appointment Landsman had arranged and suspected Landsman was to get an additional fee for arranging the interview.

Landsman said copies of the hostages' testimony already gathered and transcribed by Warner Brothers would be given for inclusion in Littlejohn's pre-sentencing report in return for the interview.

A check of the written agreements in hand showed the film's producer. Martin Elphand, had given \$7,500 and promised only 1% of the film's net profits for releases from the Wojtowicz family and Ernest Aron.

Contacted by phone from Landsman's

office, Elphand reaffirmed the verbal 2% roy dty agreement but said the agreement called for interviews with Littlejohn, his mother and father

"When John Wojlowicz starts talking into the microphone for us," Elphand declared, "at that moment he will get the 22 guarantee in writing and a nice gift from us to boot."

Littlejohn said he had left the decision regarding his plea up to Ernest Aron, who was undergoing his sex-change operation

"Ernie convinced me to plead guits," Littlejohn insisted "Landsman said that if I pleaded guilty, he would give me the money and request that Ernie be allowed to visit me in prison Landsman brought Ernie down for a contact visit on January 9th to give me the business, and I had no choice. If I didn't plead guilty, Ernie might have left me They told me I would see Ernie sooner if I pleaded guilty."

Littlejohn said that when Judge Travia questioned him, he looked back at Ernie If Ernie wanted him to say yes, he nodded, if Ernie shook his head "no," he said

Landsman admitted Littlejohn would only enter a plea if Aron was present in the courtroom. In fact, Landsman—as reported in the Advocate (March 14, 1973)—had driven Aron to the courtroom and allowed him to see Littlejohn before his wife or mother because, Landsman said, "Ernest Aron has been of great assistance to me in dealing with John."

Littlejohn has sworn to his mother that he was going to go for a jury trial. During the February 16th pleading, Littlejohn looked over at Aron so frequently that Judge Travia at one point became angry and shouled at him. "Look at me!"

Ernest Aron, who finished the second part of his sex change operation in early April, had been refusing to visit, write or speak with Littleiohn on the phone

To pay for the last part of the operation, Aron borrowed an additional \$300 of the \$1,000 Carmen had gotten from Landsman for Littlejohn's pleading guilty. In a letter to Littlejohn, Aron apologized for "making" him plead guilty and for spending \$300 of the original \$2,500 on wigs and gowns, Littlejohn had sent Aron's letters to Carmen for safe keeping. Caemen carried Aron's letter to court with her to show to the press and Judge Travia.

"He's all yours now," Carmen recalled Aron telling her after completing the operation. "Since I've had that thing out off, I have a whole different outlook on life. I don't want anything more to do with John Now he's all yours."

Our release brought reporters from the New York Post, The New York Times, The Daily News, The Long Island Press, AP and UPL to Littlejonn's sentencing April 23rd All except The Long Island Press reported the event in short cryptic uninformative stories

Landsman was visibly upset over Littlejohn's statement which we had issued to the press. He took the reporters into a private room for a conference While that was transpiring, Terry, Carmen and I waited in the hallway outside the courtroom.

At 11:57, Littlejohn and Robert Westenberg were led in. Littlejohn's face was swollen, his arms bandaged. His head hung down as if he had been drugged. Carmen broke into tears and stormed into Landsman's private press conference demanding to know what had happened to her husband. Terry rushed down the hallway and had to be physically restrained from going to her son's side.

"Don't tell me I can't see my son."

She half-shouted, half-sobbed as Landsman and I coaxed her away. "What have you done to him?" What have you done to him?"

Landsman went back to see Littlejohn and reported that he had attempted suicide at 4 a.m. that morning by slashing his wrists with a razor blade and taking an overdose of doridans he had secretly saved up over several weeks.

An inmate going to the bathroom had noticed Wojtowicz on the floor of his cell, unconscious, bleeding profusely in a growing pool of blood. He had been rushed to Bellevue Hospital where his stomach had been pumped and his slashed arms stitched and bandaged.

Judge Travia's posted schedule listed 15 cases for the day. While the press waited anxiously, all the other cases were taken first. Westenberg and Littlejohn were called last.

When Westenberg and Littlejohn were finally called, the marshalls ordered everyone outside the courtroom. The door was locked and the marshalls let in members of the press and the only remaining onlookers Littlejohn's wife, mother and brother and Westenberg's parents—searching everyone for concealed firearms.

Robert Westenberg entered and was sentenced to two years in juil for "conspiring" in the attempted robbery. He had fled from the bank before the robbery commenced and surrendered voluntarily the next day. He could have received five years.

Littlejohn was brought in, his hands handcuffed in front of him, a large double chain circled his waist. He staggered slightly as he was led before the Judge's hands.

"Take those shackles off him," Travia ordered. "They aren't necessary. We have extra marshalls here, don't we? Do you understand what I am saying, Mr. Wojtowicz?"

"Yes, your honor," Littlejohn re sponded, his speech slow and slurred.

"Behave yourself or I'll have them put back on," Travia cautioned.

Carmen sobbed audibly at the sight of her husband.

"Your honor, have mercy on my son!"
Terry cried out. "He's all mixed up. He doesn't know what he's doing."

Judge Travia then said he still considered Landsman to be Littlejohn's lawyer because he had been appointed to the case—and disregarding any private arrangements made later between Landsman and Littlejohn—he had never received a formal application removing Landsman as Littlejohn's court appointed lawyer. Judge Travia then took up Littlejohn's letter with him.

"You say in your letter that Mr. Landsman 'has refused to submit motions to me that you consider vital to your defense.' Mr. Wojtowicz, you pleaded guilty on February 16th. You wrote this to me April 1st, almost two months later. Please explain this to me."

"Before being brought here today from West Street," Littlejohn responded, "I asked the marshalls to allow me to go up to my cell to get my papers. They wouldn't let nie, so I will have to go from memory."

"Well, do you stand here before me to be sentenced or do you withdraw your plea of guilty and enter a plea of not guilty?" Judge Travia commenced and then proceded to ask Littlejohn "when" he had made the agreement with Lands man and whether it was "not true" that Littlejohn had been "paid money for articles you would write or some expose of this case?"

Travia reminded Littlejohn of his previous appearance and went through a whole series of statements of fact.

"Did you not tell me on February 16th that you knew what you were doing? Did you not tell me at that time that you were satisfied with Mr. Landsman as your lawyer? Did you not say it was your desire and wish that he remain your attor-

ney and that a guilty plea be entered in your behalf?"

Wojtowicz answered yes at each juncture.

"Now if you feel you want to withdraw your guilty plea, I might consider that and let you go to trial. Is that what you want?" Travia ventured.

"I have not been defended properly," Wojtowicz answered, his speech slurred but coherent. "I want a new lawyer."

"Ordinarily, once a lawyer is appointed," Judge Travia responded, "that's who it will be from beginning to end."

"On the date of my arrest at the airport," Wojtowicz explained, "the FBI and the Port Authority Police took me to the station and physically assaulted me. They made me stand naked. They slapped me around and called me names I don't want to repeat here. The FBI came down and started to whip me. Never once did they say, 'You have the right to remain silent.'"

"Where did you pull that?" Travia blurted. "Didn't Landsman tell you? You're saying the Miranda warning was not given to you at the time of your arrest."

"Yes," Wojtowicz responded. "When I first met my attorney, he came to see me and told me to cooperate with the FBI because my case was very unique and that I should cooperate. He said that a defense of insanity would be proposed."

"Your Kings County report shows that you are mentally able to understand the charges against you and to stand trial," Travia interierted

"When I came back from observation, I wrote Mr. Landsman a letter explaining that I didn't receive a fair, impartial and unbiased examination at Kings County," Wojtowicz elaborated. "The standard procedure there is for you to see two doctors, to have tests run and a report made. I saw only one psychiatrist. He told me what I said was confidential and my being homosexual wouldn't effect his opinion of me. He was biased in my favor. That's unusual but it's true. He told my codefendant what I had said and said I was lying. He violated professional ethics, Bobby told me about it later. I told Landsman to challenge the Kings County report."

"If you went to trial, you could use that defense in court," Travia volunteered.

"I also asked him to make a motion asking that I be sent to Springheld, Missouri. He told me he'd make it. I don't know if he made the motion or not. Also, every time I saw him I asked him to request a reduction of my \$250,000 bail," Wojtowicz continued. "He never would."

Wojtowicz then explained his agreement with Landsman for the \$5,000 with \$2,500 going to Aron for the sex change operation and the verbal agreement they made for \$1,500 to be returned to Wortowicz should be enter a guilty plea.

"Ernie was convinced that I should plead guilty." Wojtowicz continued. "My mother and wife thought a trial would be better. Ernie said that if I loved him I'd plead guilty. He and Mr. Landsman came down on January 9th and at that time I gave Mr. Landsman written permission to enter into plea bargaining on my behalf.

"In August, I was offered the option of pleading guilty to 'armed bankrobbery' and having all the other charges dropped. I told Mr. Landsman that I wanted to get the count reduced to 'simple bankrobbery' which carried a 20 year instead of a 25-year sentence. 'What's the difference?' he said. 'It's only a question of five years.'

"I told him that I wanted unarmed bankrobbery because when it came time for parole, they were a lot harder on you if you were convincted of an 'armed' robbery charge.

"At that time I told him to release \$1,000 to my wife. He said he would only do that on the day I plead guilty. I sent him an authorization through the mail but he wouldn't release it.

"I plead guilty so Ernie wouldn't leave me. I would be with him sooner. He told me about the death penalty the day I came here to plead. It shocked and surprised me

"I saw you, came before you and you asked if I 'was satisfied' with Mr. Landsman. I knew that I had to say yes for you to accept my plea, even though I didn't agree with it."

"Well, you didn't tell me at that time," Judge Travia scoffed. "You told me you were satisfied with Landsman and did in fact want to enter a guilty plea. Do you want to change that plea?"

"I don't know, your honor," Wojtowicz replied weakly.

"If you want, I will withdraw the plea," Travia offered

"Why can't you appoint me a new lawyer?" Wojtowicz repeated.

"How many times do I have to listen to that?" Judge Travia shot back. "Mr. Landsman has the foremost respect of the bar. I didn't appoint him. He was appointed by the magistrate in this case."

"Mr. Landsman." Judge Travia continued, "I wrote to you and asked if you would talk with Mr. Wojtowicz. Do you think I should remove you and appoint a new lawyer?"

"I'd rather not go through a whole defense of my handling of this case," Landsman responded. "I worked long and hard to get a plea for Mr. Wojtowicz.... At his request I brought his male wife to West Street with no small amount of dif-

ficulty. He wouldn't discuss if he would go to trial or plead guilty without his male wife present. However, they were never left alone. The Warden insisted that Tremain present."

"And your financial arrangements?"
Travia prodded.

"I negotiated with film producers for a movie, giving Mr. Wojtowicz a certain amount for his release to do a story. A part of this money was held in a legal defense fund and I agreed to return part of this money in the event the detendant pleaded guilty because less money would be needed then than in the event of a trial."

"I am not interested in your differences with the family on money matters," Judge fravia volunteered. "That is a civil matter between the two of you which belongs in a civil court, not here."

"I thought I had done my very best for the defendant," Landsman continued. "He only turned on me around April 1st. I feel this was in part due to advice from fellow inmates and from lay people who spoke to him and tried to speak to the newspapers in his behalf. I personally do not want to discuss this matter with the press."

"I order you not to," Judge Travia directed. "I won't have this case tried in the press or the movies. Sometimes these expose artists don't take that into consideration and bloody up the minds of those involved."

"It makes sense to me to take the plea," Landsman continued. "The problem is that the defendant won't talk to me anymore. He wouldn't discuss the matter with me and suid he would make his grievances known in open court. He asked me to do things that were not proper. A lot of his problems stem from his relationship, with his male wife. I came here ready today to do his defense. But since defendant won't confer with me..."

"We have not heard any protestations of 'innocence,' "Assistant U.S. Attorney Robert Clarey, representing the Federal Government, objected. "The Government opposes the withdrawal of this plea hecause of the additional burden on the time of the court. We have 2,200 defendants waiting. I don't look forward to trying this case, but the Government is ready to try this case on all four counts."

"Mr. Landsman," Travia responded. "Do you want to be removed?"

"I am willing to do anything the court wants me to do," Landsman replied.

"Mr. Wojtowicz, will you discuss this matter with Mr. Landsman"

"Think about it John, please!" Wojtowicz's mother cried out from the front row. "Do you want to discharge Mr. Landsman?" Travia a ked.

"No," Wojtowicz replied.

"Do you want to talk it over with him?" Travia continued.

"Yes," Wojtowicz replied.

"Do you want to be sentenced today?" Travia asked.

"Yes," Wojtowicz responded.

"Well, I won't do it," Judge Travia answered. "If you want to withdraw your guilty plea, I'll grant you the opportunity to think about it for an hour and to make an application."

"Thank you, your honor, but it's not necessary any longer," Wojlowicz replied.

"Were you telling the truth when you pleaded guilty?" Travia asked.

"Yes, your honor," Wojtowicz replied.
"We went through the facts at that
time I see no reason to change the plea
but I'll give you the opportunity to sit
and talk to your mother and lawyer.
Would you like to talk to your mother
and lawyer and then be sentenced later?"

"Yes, your honor," Wojtowicz answered faintly.

"Who else?" Judge Travia prodded.
"How about your wife? Wouldn't you like to talk with her too? You've got children with her too, right?"

"Yes, your honor."

"Mr. Landsman, can I put you to the task?" Judge Travia continued. "If you feel there is any basis for a change of plea, I will withdraw the plea already entered."

Judg wis via then recessed the court for one are and directed the marshalls to allow Mr. Landsman, Littlejohn's wife and mother to confer with him during the interior

Judge Travia reconvened the court at 2:08. He asked Wojtowicz if he had talked with Landsman, his mother and his wife and had had an opportunity to go over the pre-sentencing report filed concerning him.

Wojtowicz said that he had, that he wanted to withdraw his request that Landsman be removed from his case, stay with his guilty plea and be sentenced.

Travia then turned to Landsman and reminded him of the letter he had received in which Landsman said that he "stood ready to try the case," and that if he did continue as Wojtowicz's lawyer, he would not file for any compensation from the government.

Judge Travia then asked Wojtowicz if there was anything in the pre-sentencing report he found to be in error. Wojtowicz objected to two items, one statement saying he was in the bank "for 23 hours" and another which referred to him as a "sex deviate."

"I don't like characterizations made regarding defendants' characters made by someone who made the report," Judge Travia replied after noting that the differ ence in hours in the bank was not really important, "But that is not my concern You can consider yourself any way you want. I'm only concerned that you were involved in this crime."

Judge Travia then noted the letters and other reports in the official court file on the case, and then turned to Landsman and asked if anything else should be brought to his attention before sentencing is pronounced.

Wojtowicz leaned up and wiped some blood off his swollen eye. Judge Travia noted his condition and told Wojtowicz to rest.

"Sit down," Travia counselled. "Bring him a glass of water." Wojtowicz sat in the chair, his back to the audience, his head face down in his right hand.

"You can stay seated if you wish," Travia admonished.

"Thank you, your honor," Wojtowicz replied in a scratchy soft voice slightly above a whisper

"Mr. Landsman, are there any comments on what the sentence should be?" Judge Travis inquired.

"So far as the defendant's background is concerned," Landsman commenced, "the probation report is clear and complete. However, I would like to emphasize a couple of things in the defendant's behalf.

"He's never been in trouble before. He has a pretty good work history, having worked as a bank teller for a number of years. He served in the Army, spending some time in Vi 'nam, and was honorably discharged.

"A good deal of his problems arise out of his taking up with this male wife of his. Since he did that, he has had problems he didn't have previously when he was with his wife and kids. Unfortunately, his marriage didn't do too well and he got in with persons of other persuasions, you might say.

"He ought to get consideration for the fact that at one point during the hold-up he was willing to give himself up except for the fact that he thought Sal Naturile might slay the hostages. Conversations with the hostages indicate that they thought Wojtowicz was the good guy."

"Good guy?" Travia interrupted, "Or the better of the two?"

"It's a question of degree, your honor. The defendant also surrendered immediately after Naturile was slain at the airport. By pleading guilty he has saved the Government the time and expense of trying his case."

"Actually, it was his information that enabled the Government to apprehend one other involved in this case. There is no blemish on his record. He is also entitled to some consideration on his point."

"Mr. Landsman," Judge Travia responded, "you know criminal law and know that this is a serious crime bink-robbery at gunpoint, holding hostages. In this crime somebody was killed.

"When Naturile went to the bank manager and said, "This is a hold up!" the defendant went to the teller's booth and started filling up his satchel with the money there,

Since he has taken up with this socalled 'male wife,' you say he has had special problems. These are unfortunate things. That's true. But that doesn't give him any right to rob a bank to see that this male wife has the money for a sexchange operation. There are ways of getting money, like working for it."

"Mr. Wojtowicz," Travia asked, "do you have anything to say before I pronounce sentence?"

"Love is a very strange thing," Wojtowicz began in a low, even tone. "Some feel it more deeply than others do. Hove my wife Carmen, my son, my daughter, my mother; and Hove Ernic, Hove all of them. I care about them very, very much.

"Ernie attempted suicide several times before because he felt he was a woman frapped in a man's body and wanted his gender changed. I went looking for jobs. Nobody would hire me because I was gay.

"He attempted suicide again, when I failed to get him the money for the operation I had promised him for his hirthday. He took an overdose and died in the hospital and they brought him back to life. I had promised him I would get him the money. I couldn't watch him 21 hours a day. Sooner or later, I knew, he would try it again and would succeed.

"I loved him more than he loved me. I know it vins wrong to rob the bank. But what is more important, money or a human being? A human being is more important.

"I would have liked to have earned the money if I could have gotten a job. But when I got a job, "key would pay me \$1.10 or \$1.25 an hour. My basic principle is that nothing is more important thuman life. Ernie's life is very import to me. I went to that bank because I knew sooner or later he would succeed in killing himself if I didn't get him the money. I knew it was wrong, but what is money compared to a human life?

"Sal died at the airport. It wasn't necessary. When they pulled the gun away from him, he was an onarmed man. They shouldn't have put that pistol to his chest and killed him.

"I have a wonderful wife, Carmen .

"Were you thinking of her when you went into that bank?" Judge Travia blurt-

ed out "Was this Ernle more important than her?"

"Not more important," Wojtowicz replied. "It was just that it was Ernie that needed at that time. My love for him is more important than anything else in the world.

"I consider love is a gift from God. Few are fortunate enough to be able to give their love to someone else. I'm licky because I have such a good mother, Carmen and Ernest.

"I got Sal Naturile out of that bank, I saved the hostages, not the FBL If I had walked out of that bank, they would have all been dead. They know this."

"A great number of himian lives were held hostage in this case," the U.S. Attorney interjected, "This is certainly not an event we can treat lightly in any way."

"The defendant has spoken for himself very eloquently," Landsman commented. "Mr. Wojtowicz," Judge Travia direct-

ed, "please stand now."

Wojtowicz rose slowly, helped by two marshalls. He stood there still dazed, rocking slightly.

"On your plea of 'guilty' to Count 2, you are hereby committed for a term of 20 years," Judge Travia concluded quickly, rose and left the room.

After the sentencing. Terry and Carmen called Aron and pleaded with him to visit Littlejohn to avoid another suicide attempt. According to Carmen, Aron agreed to visit Littlejohn only if she were present during the visit.

Aton's new boyfriend reportedly resented his previous involvement with Littlejohn and had convinced him to burn all of Littlejohn's letters and personal effects still in his possession. However, Littlejohn's brother, Michael, retrieved the belongings instead.

"When I saw Ernie at the Defention Center." Carmen reported, "he told me that he was very upset because the Welfare Department had read all the publicity about him getting the \$2,500 for the operation and had stopped his payments saying. "If you have \$2,500 for that operation, you don't need money from us."

"He said he was in great pain," Carmen continued. "He said that he hadn't been able to have any sex in weeks and felt terrible about having had the operation. He told me he felt he 'couldn't make it in the straight scene' and was 'going back to the gay scene because gay men leave you alone.'"

Cannen says Aron told her that "if John doesn't hear from me in seven days, it's because I've killed myself." She became upset when Aron said Littlejohn would probably finish himself off when he found out about his own suicide and that one of the ways he had thought

Continued on Page 94

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about killing himself was pulling out the plug he was wearing in his new "vagina" and allowing it "to grow shut."

Carmen says Littlejohn asked her: "Was I sentenced? What was my sentence?" She says he had only vague recollections of the sentencing but recalled telling the judge that he loved her and the children, listing them before Aron, but feared Aron would find out and be mad at him for doing so.

"See, Carmen," Littlejohn reportedly told his wife, "I was in such a state my subconscious was in control and I mentioned you first. Down deep I must care for you more."

"When I told him, 'Ernie has left you, he's through with you.' "Carmen continued, "Johnny just commenced giggling hysterically."

Later, Carmen says that Littlejohn told her that Ernie, whom Littlejohn refuses to call "Liz" and becomes angry when anyone else does so, had complained to Littlejohn about having had the sex-change operation.

"I wish I'd never had it," Carmen says Aron told Littlejohn. "It's all your fault that I've done this to myself."

Littlejohn was shipped to a federal penitentiary in Indiana the next day, Friday, April 27th, to start serving his 20-year sentence.